

INTRODUCTION TO CONTRACTING & THE FEDERAL ACQUISITION PROCESS

TEXT/REFERENCE



**FEDERAL ACQUISITION INSTITUTE
OFFICE OF ACQUISITION POLICY
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FOREWARD

Origin

The Federal Acquisition Institute (FAI) developed this text/reference for two courses entitled, respectively, the “Federal Acquisition Process” and “Introduction to Contracting”.

The “Federal Acquisition Process” is a two day survey of the process for mid-level managers in fields other than Contracting. This course provides a broad overview of the Federal acquisition system—its goals, organization, statutory and regulatory foundation, participants, principal steps/decision points, and standards.

“Introduction to Contracting” is a five day course for Federal entry-level personnel in acquisition-related fields and is targeted for Contracting (GS-1102) professionals. Like the “Federal Acquisition Process”, this course also provides a broad overview of the Federal acquisition system, conveying much the same knowledge of that system. However, “Introduction to Contracting” reinforces the major teaching points with a variety of “hands-on” cases and exercises. For inexperienced personnel at the entry level, such concrete case studies are critical to comprehending and applying the more abstract theories and principles presented in this text/reference.

Both courses are part of a larger curriculum being developed by the FAI.

The FAI Curriculum

In FY91, the FAI began providing Federal acquisition trainers and educators with instructional materials for a new Contract Management curriculum. This curriculum includes the following courses, listed in a recommended order of attendance.

Core Courses

1. Introduction to Contracting
2. Procurement Planning
3. Small Purchases
4. Contracting By Sealed Bidding
5. Price Analysis
6. Contracting By Negotiation
7. Cost Analysis
8. Negotiation Techniques
9. Government Contract Administration
10. Government Contract Law
11. Types of Government Contracts (Basic and Advanced)
12. Source Selection
13. Advanced Procurement
14. Advanced Cost and Price Analysis
15. Advanced Contract Administration
16. Disputes, Claims, and Termination

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Specialized Courses

1. ADP Contracting
2. Contracting for Architect/Engineer Services
3. Construction Contracting

Characteristics Of FAI Courses

“Introduction to Contracting”, as the foundation course, introduces all 78 duties covered by the curriculum and, in addition, provides a basic understanding of the Federal acquisition system — terms, goals, statutes and regulations, organizations, participants, and applicable standards of conduct. The following are the characteristics of the higher level courses of the FAI curriculum:

- Each course in the curriculum builds on the skills and knowledge taught in prior courses.
- Each course covers specific duties and provides skill in performing those duties.
- In most cases, there is a separate lesson for each duty, with a corresponding chapter in the Text/Reference. The Text/Reference serves as a desk reference for performing the duty, complete with flowcharts, steps in performance, and job aids.
- In the classroom, the instructor generally introduces each duty in turn, describing its purpose (learning objective), applicable policies, standards for performance, and steps in performance. Then, students are provided an opportunity to perform selected steps in-class, using case studies and other such exercises.
- Practicums (i.e., self-instructional exercises) will be available at a later date to reinforce the in-class learning back on-the-job.
- Specialized courses (e.g., Construction Contracting) do not reteach the basic acquisition process, but rather concentrate on the unique regulations and procedures related to acquiring that type of deliverable.

Offerors

Each of the above courses will be offered by the General Services Administration Interagency Training Center. Other Federal acquisition trainers and educators may incorporate FAI instructional materials in their respective curricula (generally under different course titles than the above).

About The GSA Interagency Training Center

The U.S. General Services Administration (GSA) was founded to serve other Federal agencies, State and local governments, and the public. An important part of this service is helping governmental groups to fulfill their missions. The GSA Interagency Training Center supports other agencies’ missions by providing quality training to their employees. For Federal acquisition specialists, the Interagency Training Center provides courses in the knowledge, skills, and abilities necessary to perform their duties.

For more information on GSA Interagency Training Center courses, consult *The GSA Interagency Catalog and Schedule*, which is published annually. For copies, contact the GSA Interagency Training Center by phone or letter at:

GSA Interagency Training Center
P.O. Box 15608
Arlington VA 22215-0608
703 557-0986

About The FAI

As directed by the Office of Federal Procurement Policy Act, as amended, the Federal Acquisition Institute (FAI) has been working for more than a decade to (1) foster and promote Government-wide career management programs for a professional procurement work force; and (2) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to procurement by the executive agencies.

For example, the FAI over the years has:

- Published annual demographic reports on the Federal acquisition workforce, showing trends in qualifications, turnover, and hiring.
- Developed and published guidance for the consideration of Federal Procurement Executives in establishing the procurement career management programs required by the Office of Federal Procurement Policy Act, as amended.
- Assisted colleges and universities in establishing courses and programs in acquisition disciplines, published directories of such academic courses and programs, and reviewed the equivalency of those courses and programs in meeting Federal training requirements.
- Supported the Office of Personnel Management (OPM) in developing standards and examinations for acquisition positions.
- Assisted Federal managers and supervisors in identifying and recruiting highly qualified candidates for acquisition fields (e.g., by publishing recruiting brochures, preparing other recruitment materials, coordinating recruitment at selected colleges, etc.).
- Developed a Contract Specialist Workbook, as a desk reference for performing 78 core Contract Management duties.
- Developed instructional materials (including this and other text/references, instructor guides, and test/banks) for Contract Management courses.
- Assisted agencies in establishing competency-based training, education, and certification programs.
- Developed and field tested a staffing standards model for contracting activities.

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FORWARD TO THE SECOND EDITION

This is the second edition of this text/reference, made current through FAC 90-4. The following table identifies the pages changed in the Second Edition.

TEXT/REFERENCE	
PAGE	NATURE OF CHANGE
3-5 through 3-6	Additional Executive Orders added.
4-15 through 4-16	Section 4.3 deleted ("The Acquisition Function in Operation").
6-11	"Independent Government Cost Estimate" added to the list of typical elements.
6-27	Per FAC 90-4, Federal Prison Industries, Inc., is no longer a required source for <u>services</u> .
6-31	Correction to the description of the "Small Business—Small Purchase" set-aside.
6-35	Per FAC 90-3, modified role of senior procurement executive in processing J&As.
7-32 and 7-33	Title changed from "Price Related Certificates" to "Cost and Pricing Data", with greater emphasis on requesting such data. Includes the new dollar threshold for certification in DoD and other title 10 agencies. Deletes coverage of Commercial Pricing Certificate (given the repeal of section 2323 of title 10, USC).
7-38 and 7-39	Added emphasis on the purpose of discussions in competitive negotiations.
8-31	Per FAC 90-3, added language on interest for overpayments. Also deleted language on certificates of commercial pricing.

FOREWARD TO THE THIRD EDITION
(JANUARY 1993)

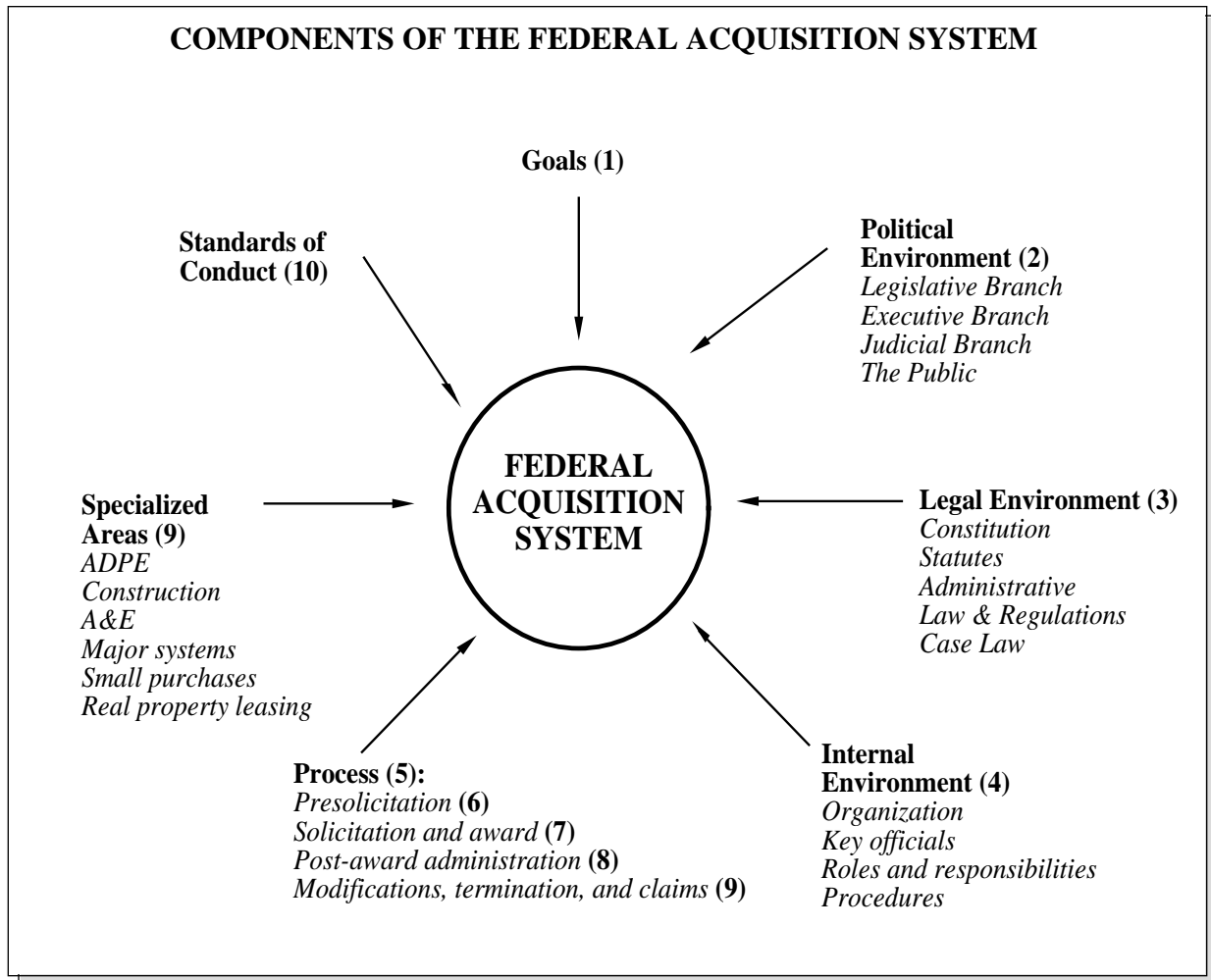
The following is a table of pages that have been changed since the prior edition.

TEXT/REFERENCE	
PAGE	NATURE OF CHANGE
3-9 to 3-10	References 48 CFR, ch. 99 (Cost Accounting Standards); reports that the FIRMR is now incorporated in App. A to FAR Part 39. (FACs 90-5 and 90-12)
6-18 to 6-19	Includes language on voluntary standards and FAR 10.006 exceptions to the use of FED Specs (FAC 90-9)
6-28	Omits reference to GSA inventories, with respect to critical and strategic materials (FAC 90-16)
7-43	Adds the modifier "or the ability to obtain them" to certain responsibility standards.
7-48	Emphasizes that the GAO only recommends award of protest costs (FAC 90-6)
9-10	Refers to Alternative Dispute Resolution procedures (FAC 90-10)

FORWARD

PREFACE

THE FEDERAL ACQUISITION PROCESS



*Exhibit P-1. Components of the Federal Acquisition System.
(Note: The numbers in parentheses indicate the chapter
in which the component is discussed)*

Learning Objectives

- P-1 Identify the basic components of the Federal acquisition process.
- P-2 Define significant terms used in Federal contracting.
- P-3 List and describe the essential elements of a contract.
- P-4 Describe how a contract is discharged.

Exhibit P-2. Learning Objectives.

Purpose And Coverage

This course is an introduction to the Federal acquisition process. It has been designed for anyone with a role in the acquisition of supplies or services for the Federal Government who needs a general knowledge of the:

- Nature and fundamental concepts of contracting.
- Goals of the Federal acquisition process and environmental constraints on goal accomplishment.
- Role of the Congress, the President, and the Judiciary in acquiring supplies and services for the Government.
- Basic statutes and regulations that govern the acquisition process.
- Key players and participants in the acquisition process and their respective roles and responsibilities in acquiring supplies and services.
- Steps in the acquisition process.
- Standards of conduct and ethics that apply to participants in the acquisition process.

Components of the Federal Acquisition Process

The Federal acquisition system is comprised of many components or subsystems. Exhibit P-1 illustrates some of these components: laws and regulations, the FAR, policies, procedures, definitions, organizations, and players. You will learn about many of these components in this course.

Learning the Acquisition Process

For many, a general knowledge of the Federal acquisition process will suffice. For others, this course is only the first step in learning the Federal acquisition process in detail. If you are among the latter, the GSA Training Center offers a complete curriculum of courses that can progressively and systematically develop your knowledge and skill in performing acquisition duties and tasks.

Acquisition Terms

As a student of the acquisition process, your primary objective is to learn the basic terms of the trade. As in many professions, there are terms of the art whose definitions may differ somewhat from the vernacular. The following terms and definitions are taken from the Federal Acquisition Regulation (FAR).

Acquisition

FAR 2.1

“Acquisition” means the acquiring by contract, with appropriated funds, of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Contract

FAR 2.1

“Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq.

Contracting

FAR 2.1

“Contracting” means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

Small Purchase

FAR 13.101

A “small purchase” is an acquisition through one of the “simplified procedures” (e.g., imprest funds, purchase orders, or blanket purchase agreements) prescribed in Part 13 of the FAR. (See FAR §13.101 for more detailed definitions of “small purchase” and “small purchase procedures”).

PREFACE

Supplies

FAR 2.1

“Supplies” means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

Service Contract

FAR 37.1

“Service contract” means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract may be either nonpersonal or personal. It can also cover services performed by professional or nonprofessional personnel, on either an individual or organizational basis.

Nonpersonal Services Contract

FAR 37.1

“Nonpersonal services contract” means a contract under which the personnel rendering the services are not subject, either by the contract’s terms or by the manner of its administration, to the supervision and control that usually prevails in relationships between the Government and its employees.

Personal Services Contract

FAR 37.1

“Personal services contract” means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, as Government employees.

Elements of A Contract

As defined above, a contract is a mutually binding legal relationship. To be binding, the contract must include the following:

- An offer.
- An acceptance.
- Consideration.
- Execution by competent parties.
- Legality of purpose.
- Clear terms and conditions.

The following is a brief description of each of these elements.

Offer

FAR 2.101

An offer is a legally binding promise, made by one party to another, to enter into a contractual agreement, if the offer is accepted. Generally, the Federal Government “invites” or “requests” firms to submit offers, which—if accepted by the Government—bind the firms to perform the resultant contracts. In sealed bidding, offers made in

THE FEDERAL ACQUISITION PROCESS

response to Invitations To Bids (IFBs) are called “bids.” In negotiated acquisitions, offers made in response to a Request for Proposals (RFP) are called “proposals.”

For small purchases, however, the Government typically issues Purchase Orders (POs). A PO is an offer that becomes a contract only upon acceptance by the firm to which the PO is addressed.

Acceptance

Acceptance is the act of accepting an offer. To be binding, acceptance must be:

- Definite,
- Communicated (or an action taken that is indicative of acceptance), and
- Unconditional—acceptance that is conditional upon a change in the offer is actually a counter-offer, in which case acceptance to the original offer is not binding.

As noted above, a bid submitted in response to an Invitation for Bids or a proposal submitted in response to a Request for Proposals constitutes an offer. If the Government accepts the bid or proposal, a contract results (assuming all elements of a contract are represented in the offer and acceptance).

Consideration

For a contract to be binding, the offeror must receive consideration for the goods or services being offered. Consideration refers to anything of value that changes hands between the parties to a contract. Generally, consideration takes the form of money. However, consideration can take other forms than monetary. For instance, the Government may agree to an extension in the delivery date of a contract if, in return, the contractor agrees to provide extra copies of a deliverable at no additional cost.

Competent Parties

The two (or more) parties to a contract must be legally competent to enter into contractual relationships. Generally, this means that the parties must, at the time of agreement, have been:

- Of sound mind,
- Free of the influence of drugs or alcohol, and
- Legal entities.

PREFACE

Legality of Purpose

The purpose or subject matter of the contract must be legal. This means, that a contract to perform an illegal act is unlawful, void, and will not be enforced. Contracts deemed to be against the public interest or in violation of any statute are void.

Clear Terms and Conditions

For a contract to be enforceable, its terms and conditions must be clear enough to permit the courts to conclude that a contractual agreement was intended. Uncertainties concerning offer, acceptance, or consideration may render an agreement unenforceable. This element is sometimes referred to as “mutuality” or “meeting of the minds.”

Discharge Of A Contract

The discharge of a contract means that the obligation incurred by the parties when they entered into the agreement are excused; they are no longer bound to perform as promised. Discharge may come about in several ways, including:

- Performance by both parties.
- Rescinding all or part of the contract.
- Substituting a new contract for an old contract.

Goals Of Contracting

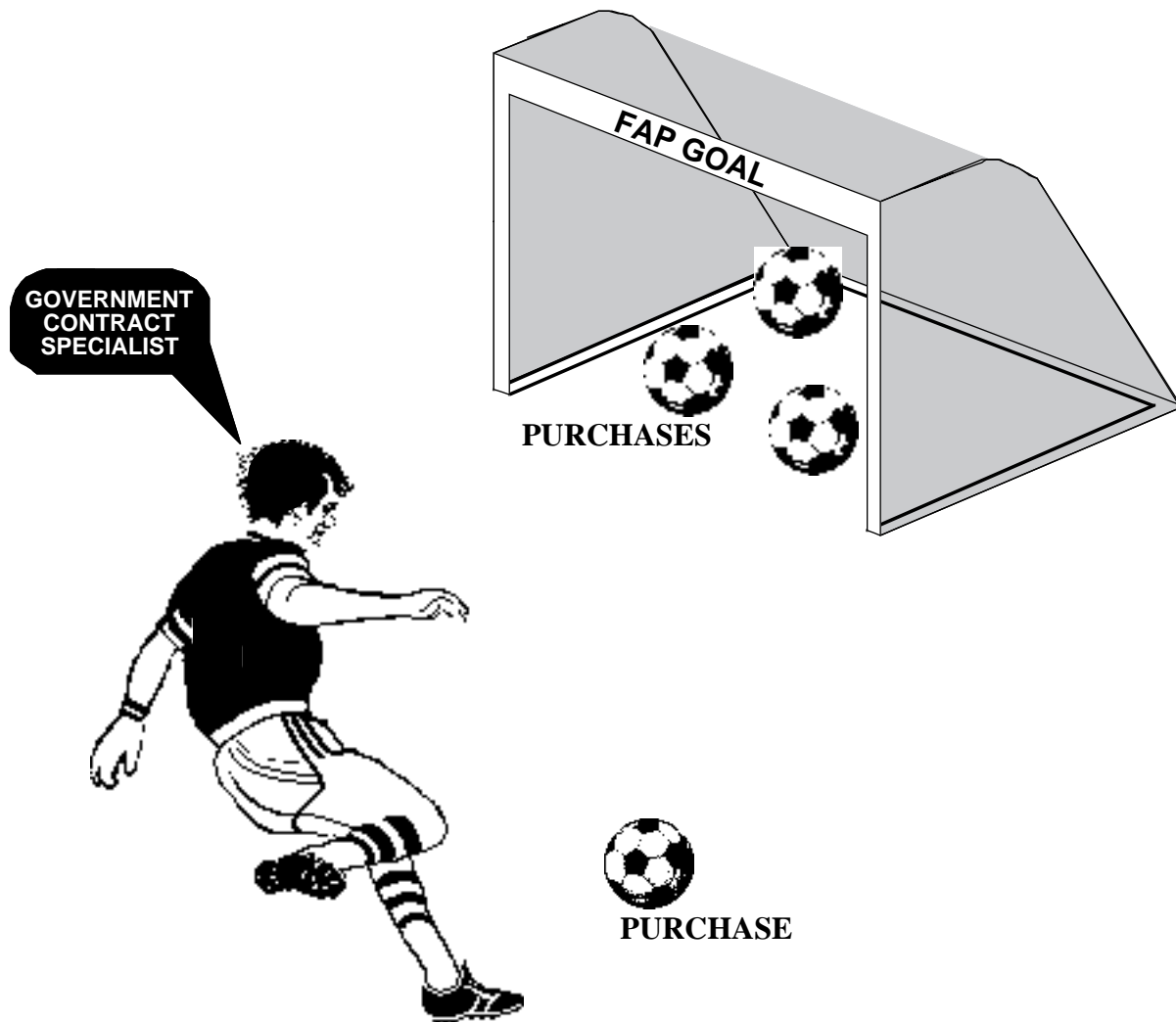
In this preface, you have learned:

- The definition of contracting and related terms.
- The elements of a contract.
- How a contract is discharged.

In the following chapter, you will learn about the ends for which a contract is the means.

CHAPTER 1

GOALS OF THE FEDERAL ACQUISITION PROCESS



**Score a goal with your purchase to
achieve the FAP goals !!!**

Learning Objectives

- 1-1 Identify and define the goals of the Federal Acquisition Process.
- 1-2 Describe four environmental factors that affect the Government's ability to accomplish goals of the acquisition process.
- 1-3 Summarize Congressional statements of procurement policy in 10 U.S.C. 2301 and 41 U.S.C. 401.

Exhibit 1-1. Learning Objectives.

CHAPTER INTRODUCTION

This chapter articulates the goals for the Federal acquisition system. It also surveys environmental forces that affect your ability to accomplish the goals.

1.1 GOALS OF THE FEDERAL ACQUISITION PROCESS

Why acquire supplies and services? The Government resorts to the acquisition process when supplies or services are necessary to its missions and cannot be provided more cost-effectively in-house.

How does one judge the Government's success in acquiring needed supplies and services? This question is often viewed as relevant only to the contracting (purchasing) office. Yet, the contracting office is only one of the many organizations that play a role in the acquisition process. Hence, the goals of the acquisition system should be conceived broadly and should encompass the contribution of all parties to the process—including requiring activities, audit activities, budget activities, and the like. What are the goals of this process?

THE PREAWARD GOAL

Obtain the optimum market response to requirements for supplies and services, in terms of:

- Quality.
- Timeliness.
- Cost.

While:

- Minimizing business and technical risks.
- Accomplishing socioeconomic objectives.
- Maximizing competition.
- Maintaining integrity.

Exhibit 1-2. The Preaward Goal.

1.2 THE PREAWARD GOAL

The preaward goal of the acquisition process is to obtain the optimum market response to the Government's requirements for supplies and services. What is optimum? Providing requiring activities with exactly what is needed (i.e., quality), when it is needed (i.e., timeliness), at a fair and reasonable price, while, at the same time, serving the Government's long-term interests by:

- Minimizing the risks inherent in the acquisition.
- Advancing the Government's socioeconomic policies.
- Encouraging quality suppliers to continue doing business with the Government.
- Maintaining absolute integrity in all dealings with the private sector.

Typically, most contracts involve tradeoffs between these various goals. Hence the word "optimum."

1.2.1 Quality

FAR Parts
10, 11, &
15.605

Quality means the extent to which the actual minimum needs of the end users are satisfied.

The Federal Acquisition Regulation (FAR) requires that quality "be addressed in every source selection."¹ This is done in part by:

- Defining the need in functional terms,
- Describing the performance and/or design characteristics that are necessary to satisfy the need (e.g., height, weight, energy usage, reliability, maintainability, useful life, etc.).
- Prescribing standards for determining whether a deliverable is acceptable (i.e., meets the need as defined in the contract), and
- Establishing inspection and testing procedures for measuring the deliverable against those standards.

The FAR further allows the use of quality as a factor in evaluating competing contractors. For that purpose, the FAR states that quality may be expressed in terms of technical excellence, management capability, personnel qualifications, prior experience, past performance, and schedule compliance.

¹ By "source selection" is meant the selection of an offeror for the award of a contract in competitive acquisitions.

GOALS OF THE FEDERAL ACQUISITION PROCESS

The bottom line on quality, however, is not how well the Government has defined the end user's need in its specification and evaluation factors. Rather, quality is a question of whether the deliverable, after it is put into service, accomplishes the function for which it was acquired.

1.2.2 Timeliness

With respect to supplies, timeliness means delivering the requisitioned supplies to the end user in the quantity and at the time necessary for the end user's purposes. With respect to services, timeliness means performance at the time necessary for the end user's purposes.

When planning to meet an agency's needs, you must consider the time it takes to:

- Prepare specifications and purchase descriptions.
- Obtain funding and administrative approvals for purchase requests.
- Solicit offers, make source decisions, and award contracts.
- Complete, inspect, and accept the work.

When the requirement is for supplies, you must also factor in time for:

- Shipping and distributing supplies to the Government.
- Receiving and inventorying the supplies.
- Physically distributing supplies to the end users.

In addition, forecasts of time required for an acquisition should be cast in terms of probability—given the risk of delay that is inherent in any acquisition.

The bottom line for timeliness is whether the end user has the supplies in hand (or has had the benefit of the requisitioned services) when, and where, and in the quantity required for his or her mission. Otherwise, the mission will either be delayed or not accomplished.

1.2.3 Cost

The cost of supplies or services is more than just the price (i.e., dollar amount) of the contract. Other costs include:

- Any direct costs for acquiring the supplies or services not covered in the contract price (e.g., the cost of delivery when the contract provides for FOB Origin, under which the buyer pays the cost of shipping and risk of loss during transportation).
- Any cost of ownership not covered in the contract price (e.g., the cost of installation, inventory management, spares, maintenance, repairs, training, disposal, etc.).
- The Government's overhead for awarding and administering the contract (e.g., the salary costs of employees who prepare specifications, develop purchase requests, evaluate offers, determine responsibility, execute contracts, inspect and accept deliverables, etc.).

For example, two companies propose to offer products that meet both performance and quality requirements. The product of Company A requires more electricity than the product of Company B. However, Company A's purchase price is 10% less. Whether Company A's offer represents the best value is not only a matter of the purchase price but also of the net present value of the cost of electricity over the useful life of the product.

In short, the bottom line for any deliverable is the total cost of both acquisition and ownership, including the Government's overhead. Since the contract price is only one element of that cost, you should be wary of judging an acquisition by that cost alone.

1.2.4 Minimizing Business, Financial, and Technical Risks

In a contractual relationship, both parties want to achieve their desired objectives. When the risks associated with those objectives are perceived as being too high or unfairly apportioned, either or both of the parties may be unwilling to enter into the contract.

For the contractor (seller), the principal business or financial risk is the loss of money on the contract. No firm can forecast the cost of doing work under a contract with absolute certainty. There will always be such potential perils as strikes, equipment malfunctions, turnover of key personnel, financial setbacks (e.g., if the firm's bonds take a tumble), defective parts, bottlenecks in the availability of raw or semi-finished

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goods, general inflation, unexpectedly long learning curves, and the like. Absent specific protection against such perils in other terms and conditions of the contract, offerors may inflate proposed prices to cover the “worst case” scenarios.

For the Government, the principal business risk is payment of an unreasonable price for the work (e.g., a price substantially higher than the actual cost of performance). This might happen, for instance, if the contract price had been inflated to protect the contractor from worst case scenarios that never materialized.

For the contractor, technical risks are strongly related to financial risks. Any problem in meeting technical requirements might require more effort (labor and material costs) than was contemplated at the time of the agreement on price. The contractor may even discover that the work is literally impossible at any price. From the Government’s standpoint, technical risk goes beyond financial impact: The agency’s very mission may be at risk. Examples of technical risks are shown in Exhibit 1-3.

TECHNICAL RISKS

- That the contractor will fail to deliver or will not deliver on time.
- That the final deliverable will not satisfy the Government’s actual need, whether or not “acceptable” under the terms and conditions of the contract.
- That the Government’s need will change prior to receipt of the deliverable.

Exhibit 1-3. Technical Risks.

When purchasing standard commercial (off-the-shelf) supplies and services, the risks to both parties—both business and technical—tend to be minimal. However, when the work becomes more complex or uncertain (e.g., building to a new Federal or military specification or conducting research and development), risk may become a significant factor in establishing and negotiating the terms and conditions of the contract. Absent some reasonable allocation of risk, one or both of the parties may be unwilling to enter into a contract. Consequently, over the years, the Government has developed a number of solicitation provisions, contract clauses, and contract forms that are intended to mitigate specific types of risk. Examples are listed in Exhibit 1-4.

EXAMPLES OF PROVISIONS, CLAUSES, AND FORMS THAT MINIMIZE RISK		
<i>Clause or provisions</i>	<i>Purpose (in part)</i>	<i>Minimizes the risk of:</i>
Contract Award FAR 52.214-10 and 52.215-16)	Provides for rejecting offers from offerors who cannot affirm their capability to perform.	Default and/or unsatisfactory performance.
Economic Price Adjustment Labor and Materials (FAR 52.216-4)	Allows adjustments in the contract price if rates of pay for labor or the unit prices for materials shown in the schedule either increase or decrease.	Unexpectedly high rates of inflation or deflation in the market prices of labor or supplies that are critical to contract performance.
Performance Bond (SF 25)	Requires the contractor to guarantee repayment (e.g., through a surety) of excess costs of repro-curing an item if it defaults.	Acquiring from markets (e.g., construction) that have experienced unusually high rates of business failure.
Advance Payments (FAR 52.232-12)	Allows the Government to provide the contractor with startup funds prior to the commencement of work on the contract.	Impossibility of performance, if private sector financing is not likely to be available in the required amount or at a reasonable rate of interest.
Warranty of Supplies of a Noncomplex Nature (FAR 52.246- 17)	Requires contractors to repair or replace a defective item during a specified period after acceptance (or provide other consideration).	Unsatisfactory performance during the useful life of the item.

Exhibit 1-4. Examples of Provisions and Clauses That Minimize Risk.

1.2.5 Socioeconomic Objectives

The Federal Government annually expends billions of dollars to acquire supplies and services. In its 1972 report to the Congress, the Commission on Government Procurement noted that:

“...the magnitude of the Government’s outlays for procurement and grants creates opportunities for implementing selected national policies. The opportunities lie in the disciplining effect which the Government can exert on its contractors and grantees. It can require, for example, that suppliers maintain fair employment practices,

GOALS OF THE FEDERAL ACQUISITION PROCESS

provide safe and healthful working conditions, pay fair wages, refrain from polluting the air and water, given preference to American products in their purchases, and promote the rehabilitation of prisoners and the severely handicapped.”

For instance, the Small Business Act has established a policy of placing a fair proportion of Federal acquisitions with small business and small disadvantaged business concerns. Examples of other socioeconomic goals are listed in Exhibit 1-5. In most cases, these goals are met by incorporating the corresponding clauses in Government contracts and enforcing those clauses. In some cases, subcontracts also contain clauses that require subcontractors to achieve or attempt to achieve the stated objectives.

EXAMPLES OF SOCIOECONOMIC OBJECTIVES	
<i>Objective</i>	<i>Required By</i>
Utilize business firms in Labor Surplus Areas	Small Business Act U.S. Dept. of Labor Regulations Defense Manpower Policy No. 4B
Pay prevailing wages for work on Government contracts	Walsh-Healey Public Contracts Act Davis-Bacon Act Service Contract Act
Clean the environment	Clean Air Act Clean Water Act
Provide employment opportunities for American workers	Buy American Act
Ensure equal employment opportunity	Executive Order 11246 Executive Order 11141
Promote the hiring of veterans	Veteran's Preference Act

*Exhibit 1-5. Examples of Socioeconomic Objectives
and the Legal Action(s) that Require Them.*

CHAPTER 1

Socioeconomic Goals in the Private Sector

Commercial and industrial concerns also consider social and economic objectives in their acquisition procedures. For example, private sector entities often:

- Promote the use of small and small disadvantaged suppliers.
- Assist minority-owned business concerns (suppliers and vendors).
- Use American-made over foreign-made products.
- Prefer local suppliers over suppliers from other geographic locations.

1.2.6 Maximizing Competition

Often, maximizing competition is viewed as a matter of numbers—how many offers did the Government receive for a given requirement? But, what if the most efficient, economical, and highest quality suppliers decline to submit offers? What if the only offers received are from the marginal and inefficient producers? Because of these potential situations, competition is not merely a matter of numbers. Rather, maximizing competition means:

- Building and maintaining a base of responsible suppliers who are willing and able to compete for Government contracts.
- Encouraging those suppliers to research and invest in new manufacturing technologies and product innovation where such research and investments would help the Government more effectively and economically accomplish its missions.
- Broadening the industrial and mobilization base, in the event that the Government needs to rapidly build up the armed forces.

The Government has employed a variety of strategies for accomplishing these subgoals, including:

- Dual sourcing — awarding part of a requirement to one source and another part to a second source.
- Obtaining data or rights to data (designs, specifications, etc.) from one source for use by other sources in competing for future requirements.
- Permitting companies to include (by agreement) independent research and development (IR&D) costs in their indirect costs charged to Government contracts.
- Funding innovative research efforts by small business concerns.

1.2.7 Maintaining Integrity

Frequently, a contractor's protest of a contract award activates the need to "protect the integrity" of the Federal acquisition process. Basically, in Government contracting, integrity means:

- Dealing fairly and in good faith. For example, in negotiated acquisitions, CO's may not use "auctioning" techniques, "technical levelling", or "technical transfusion"² to, in essence, play one offeror against another.
- Maintaining impartiality and avoiding preferential treatment.
- Avoiding any appearance of conflict of interest or in any other way compromising public trust in the Federal acquisition system.

Chapter 10 of this text deals extensively with ethics, conflicts of interest, and other matters that, collectively, relate to integrity.

1.2.8 Tradeoffs

When contracting for goods and services, you must often make tradeoffs between the goals and seek an optimum business solution. The following are among the many tradeoffs to consider:

Between Quality and Cost

When preparing and reviewing specifications and purchase descriptions, one important consideration is the tradeoff between cost and the different alternatives for satisfying the Government's minimum need. For example, in one acquisition, a requiring activity specified that impellers for a pump be cast from stainless steel. However, it turned out that cast iron would have been as reliable and effective as stainless steel at a fraction of the cost. Thus, quality cannot be considered without regard to cost, just as cost cannot be considered without regard to quality.

Between Timeliness and Cost

One way of ensuring that supplies are available when and where needed is to stockpile large quantities in Government warehouses. From the standpoint of the contracting activity, a savings is also realized by placing one large order rather than issuing a separate order each and every time the end user requires the item on-the-job.

² "Auction" techniques includes (1) indicating to an offeror a cost or price that must be offered to receive further consideration, (2) advising an offeror of its price standing relative to another offeror, and (3) otherwise furnishing information about other offerors' prices. "Technical Leveling" means helping an offeror bring its technical proposal up to the level of other proposals through successive rounds of discussion. "Technical Transfusion" means disclosing technical information supplied by one offeror to other offerors.

On the other hand, inventories are costly to maintain and are subject to “shrinkage” (i.e., theft, deterioration, misplacement, etc.). From the standpoint of inventory costs alone, the Government would prefer to order on a “just-in-time” basis, as often as necessary to meet the end user’s immediate need—and keep no inventory on hand.

Hence, the optimum ordering quantity is a matter of minimizing ordering and inventory costs, taken together, as follows:

$$EOQ = \sqrt{\frac{2SR}{CK}}$$

Where

EOQ = Economic Order Quantity

S = Cost of preparing and awarding the contract or delivery order.

R = Total quantity required for the year.

C = Price per unit.

K = The cost of carrying one unit in inventory for one year, as a percentage of C.

For example, if:

S=\$300

R= 5,000 Units

C = \$100

K = 20%

Then:

$$EOQ = \sqrt{\frac{2 \times \$300 \times 5000}{\$100 \times .2}}$$

and the Economic Order Quantity = 387 units. From the standpoint of lowest total cost—considering both ordering and inventory costs together, 387 is the precise quantity to order when the Government’s warehouses run out of the units.

If, in this example, timeliness were the overriding goal, then the Government would make one purchase of 5,000 units at the beginning of the year. If cost is the overriding goal, then the Government would order in lots of 387.

Reality is not quite so simple. This decision can become more complicated when you factor in such variables as (1) the availability of quantity discounts, (2) long-term or cyclical trends in unit prices, and long-term trends in availability (i.e., will the items be available at any price?).

GOALS OF THE FEDERAL ACQUISITION PROCESS

There are other potential tradeoffs, with respect to timeliness, beyond inventory levels. For instance, there are tradeoffs between cost and delivery terms. If the Government pushes for delivery in half the time that is customary in that market, the tradeoff might be a higher award price.

Between Risk and Cost

At times, minimizing the contractor's risks may help reduce the eventual award price. For instance, if the Government is willing to protect a contractor from inflation through an Economic Price Adjustment clause, proposed prices should exclude any contingency for such inflation. Likewise, if the Government is willing to financially assist the contractor (e.g., advance payments), the result should be prices that exclude the corresponding cost of private sector capital.

At other times, minimizing risks may result in a higher award price but a lower total cost for the supplies or services. For example, the Government may require the contractor to furnish a warranty. In that case, the contractor would propose an award price that covers its expected costs for repairs over the warranty period. This would be in the Government's interests if the net increase in the award price is less than the net present value of the expected cost of repairs that the Government would otherwise incur over that same period.

Finally, the Government may be willing to pay a higher price to reduce the risks of default, unsatisfactory or marginal performance, and the like. For instance, the Government is willing to pay a higher price to a responsible firm than gamble on a company that cannot affirm its responsibility. Likewise, the Government may be willing to pay a higher award price to a firm which, based on an evaluation of its relative technical and business management strengths, is more likely than a competitor to succeed in meeting the Government's objectives.

These are but a few of the many examples of potential tradeoffs between risk and cost.

Between Socioeconomic Objectives and Cost

The Government often pays a premium, explicitly or implicitly, to accomplish socioeconomic goals. For instance, the Buy American Act authorizes the Government, under certain circumstances, to pay a higher price for domestic made goods vis-a-vis foreign made goods. Moreover, socioeconomic requirements may add to the Government's overhead for contracting surveillance and reporting (e.g., to monitor compliance with labor laws).

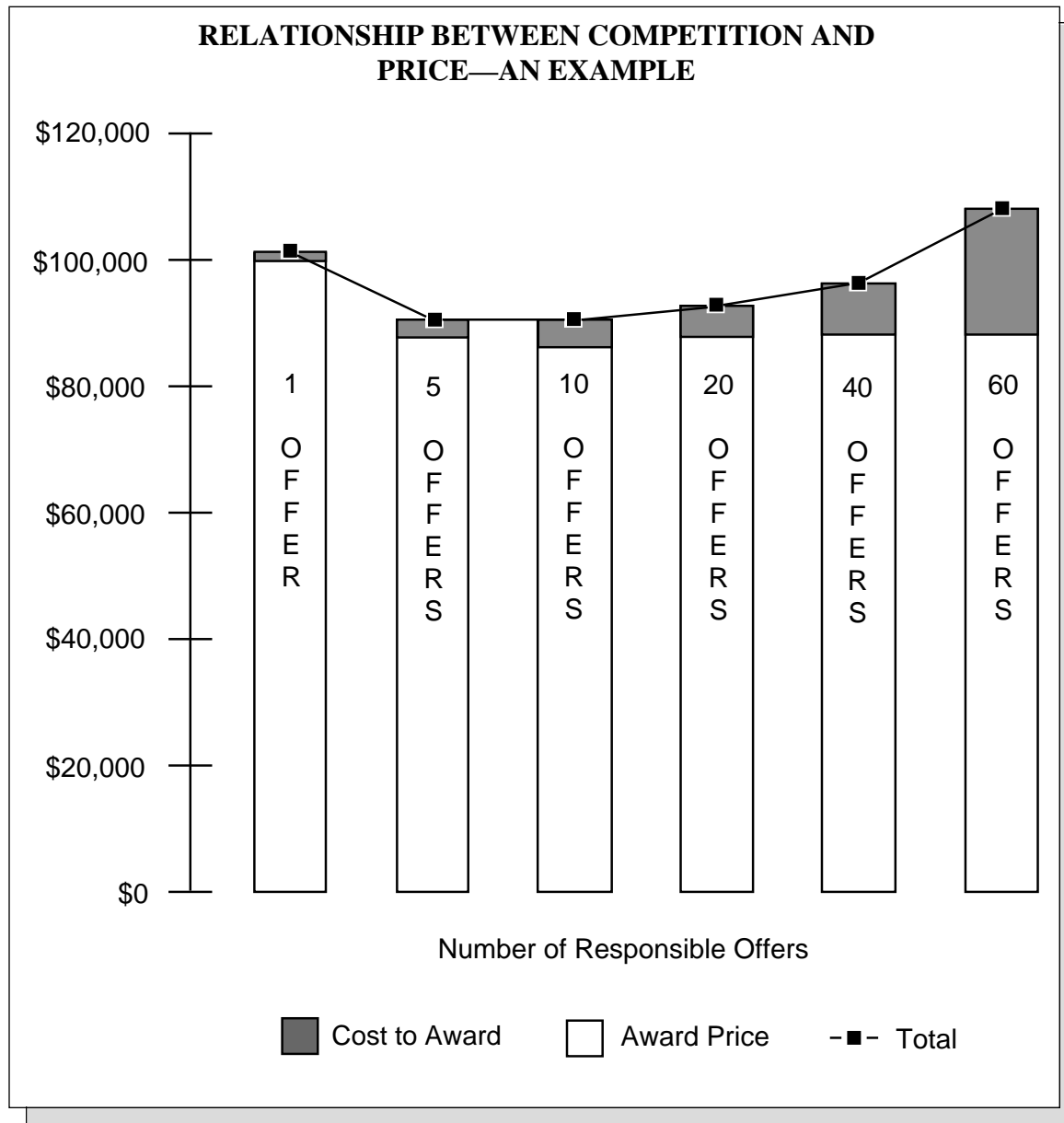
On the other hand, socioeconomic programs have contributed to accomplishing other goals of the Federal acquisition process. For example, the small business program has been effective in creating new sources of supply, thus maximizing competition.. Another example is the improvement in workforce capabilities and productivity brought about by occupational, health, safety, and wage rate laws. These laws help prevent accidents that are costly and delay work while encouraging better qualified persons to seek jobs coming under the wage rate laws.

At times, socioeconomic goals are blamed for problems with quality or cost control that in fact result from failings in acquisition planning, market research, and the like. Socioeconomic objectives are no excuse for shortcomings in accomplishing other goals of the Federal acquisition process—socioeconomic factors are, after all, never the only factors in determining the optimum market response for the Government’s requirements.

Between Competition and Cost

The primary benefit of competition is its demonstrated success in reducing award prices. On the other hand, this benefit of competition is subject to diminishing returns. And, the Government incurs an additional cost for every offer it considers (e.g., the salary expenses of Government workers who read the offer, technically evaluate it, apply price-related factors, and—if the offer has a reasonable prospect for award in negotiated acquisitions—discuss it with the offeror). This suggests that there is an optimum level of competition for any given acquisition, as illustrated in Exhibit 1-6. This also suggests that there are practical limits to a Contracting Officer’s search for additional vendors to extend open market mailing lists.

There may also be an inverse relationship between the goals of minimizing risk and maximizing competition. If minimizing technical risk was the only goal of the acquisition process, the Government would tend to award only to the offeror or offerors who successfully performed the same or similar work on previous contracts with the Government.



Between Integrity and Cost

In the short run, tactics such as auctioning and technical leveling could probably win lower prices for the Government. In the long run, such tactics would tend to drive good firms out of the Government market — leaving behind firms who play by equally unscrupulous rules. Thus, playing fair in the long run is not only honorable but also makes good business sense.

Tradeoff Analysis

In short, every goal has its cost. Sometimes that cost is a matter of law and regulations and, as such, is beyond tradeoff analysis. At other times,

however, the success of an acquisition can be measured in part by the degree to which the contract represents the optimum market response to the Government's requirement—all goals of the process taken as a whole.

1.3 THE POSTAWARD GOAL

The postaward goal is described in Exhibit 1-7.

POSTAWARD GOAL
Assure that purchased supplies and services are:
<ul style="list-style-type: none">• Delivered or performed when and where specified in the contract.• Acceptable, in terms of conforming to the contract's specifications or statement of work.• Furnished in compliance with other terms and conditions of the contract.

Exhibit 1-7. Postaward Goal.

This goal will largely be addressed in Chapters 8 and 9.

1.4 ENVIRONMENTAL FACTORS

The Government's ability to accomplish the goals and objectives of the acquisition process is a function of environmental opportunities, trends, and constraints. The Federal acquisition process is influenced by a number of basic environmental forces, including:

- Market Forces.
- Legal Forces.
- Internal Forces.
- Political Forces.

1.4.1 The Market Environment

The market (i.e., market forces and conditions) largely determines:

- Whether or not the Government can fulfill its needs at all and the level of quality that can be achieved.
- The timeliness of fulfillment.
- Cost of the supplies or services.
- Risks inherent in the acquisition.
- Degree to which socioeconomic objectives can be accomplished and alternatives for accomplishing them.
- The level and nature of competition for the acquisition.
- The potential tradeoffs between quality, timeliness, and cost.

A list of factors that affect market environment is presented in Exhibit 1-8. Of these, the most significant is the “law” of supply and demand.

KEY MARKET CHARACTERISTICS

- Commercial specifications and industry standards.
- Availability of commercial products to meet Government needs.
- Trends in technology.
- Trends in supply/demand.
- Other factors that affect market prices (e.g., cost of money, raw materials prices).
- Production and delivery lead times.
- Other terms and conditions characteristic of the market.
- Number of firms in market.
- Characteristics of the supplier base, in terms of such factors as:
 - Market shares and niches.
 - Market/corporate strategies.
 - Product lines and features.
 - Patent and data rights.
 - Product reliability and history.
 - Production capability and capacity.
 - Distribution and support capabilities.
 - Interest and willingness to compete for Government work.
 - Financial strength.
 - Eligibility for the 8(a) program or for small business, small/disadvantaged business, or labor surplus area set asides.
- Laws and regulations peculiar to that market.

Exhibit 1-8. Key Market Characteristics.

Some supplies and services are required only by the Government and have no commercial counterparts (e.g., weapons systems). In this situation, the Government creates a marketplace which is generally limited in scope and competition, to which it may become “captive.”

1.4.2 The Political Environment

The political environment, for the purposes of this chapter, refers to the interactions between the three principal branches of the Government and the public at large with respect to the Federal acquisition process. These interactions tend to focus on:

- Legislative authority for the program or programs to be supported by the acquisition.
- Appropriations for the program or department that would fund the acquisition.
- Statutes that govern the acquisition process generally.
- Congressional oversight of specific programs or the acquisition process in general.

Every acquisition is, in part, a function of the political environment, if only because the acquisition (1) ultimately supports a program or programs established through the political process and (2) is conducted according to policies and rules that, to a large extent, have been established through that same process.

The larger the acquisition, the more likely it is to be directly influenced by political considerations. The Congress may take a direct interest in an acquisition, for example, in its impact on constituents. The President may take a direct interest in the acquisition, in terms of its impact on the Federal budget and his or her own priorities. Special interests may lobby both the executive and legislative branches to fund the acquisition, overturn it, or steer it to certain companies or regions of the country.

In short, politics—directly or indirectly—ultimately determine what is bought and, directly or indirectly, play a role in determining how and from whom it is bought.

1.4.3 The Legal Environment

The Federal acquisition process is further influenced in its workings by the legal environment. This is not unique to the Federal acquisition process. Much of the subject matter of any business law course has to do

GOALS OF THE FEDERAL ACQUISITION PROCESS
with the law of agency and the law of contracts. There are many parallels in contract law in terms of the applications to private sector firms vis-a-vis Federal contracts. These include the following:

Authority to execute contracts	Only a duly appointed Contracting Officer (CO), acting within the scope of his or her authority, may enter into a contract on behalf of the Government.
Approvals	In some cases, even though a CO is acting within his or her authority, a contract may not be binding on the Government unless required approvals have been obtained.
Apparent authority	The Government is not bound by the unauthorized acts of its agents. This “doctrine” often comes into focus when there is a question as to whether the actions of a person representing the CO, (e.g., a contracting officer’s technical representative) are binding on the Government.
Contract clauses	Many clauses found in Government contracts are not normally found in private sector contracts or depart significantly from terms and conditions customary in the private sector. The “Changes—Fixed Price” (FAR 52.243-1), “Audit—Negotiation” (FAR 52.215-2), and “Disputes” (FAR 52.233-1) clauses are examples.
Funding	Funds appropriated by Congress may be used only for the purposes for which they were appropriated.
Whom to contract with	Many laws and regulations that place constraints on an offeror’s eligibility to receive a Government contract are unique in whole or in part to Government contracting.
Steps in the acquisition process	In general, the process of soliciting and awarding Federal contracts is prescribed in far greater detail in law and regulations than private sector contracting. Moreover, offerors may utilize unique procedures and forums for protesting Federal contract awards if these are not made according to those laws or regulations.

1.4.4 The Internal Environment

Internal environment refers to the interactions of various organizations and officials within a department or agency with respect to the Federal acquisition process.

Agencies (agency head) have some flexibility in organizing the agency and managing it (organizational structure, delegation of management authority). In addition, many provisions of the FAR permit agencies to

decide at what level or who (delegations of authority) will make judgments or exercise authority with respect to a given contract-related decision.

Among the internal factors that affect the performance of the acquisition system:

- The organization's mission, and the primary types of supplies or services required for that mission.
- Delegations of authority, both de jure and de facto (e.g., who are the decision makers, and what do they have the authority to decide?).
- The quality of personnel, in terms of their knowledge of acquisition tasks, skill at performing those tasks, and ability to exercise delegated authority.
- Staffing levels (e.g., ratio of contract specialists to contract actions and the number of staff hours available for each action).
- Internal controls and oversight (e.g., who evaluates performance, what critical factors and standards of performance are applied, who audits performance, and how is work sampled and reviewed, etc.).

1.5 CONGRESSIONAL POLICIES FOR ACQUIRING SUPPLIES AND SERVICES

Many statutes prescribe policies pertaining to Federal acquisition (Chapter 3, Basic Statutes and Regulations). For example, annual defense authorization and appropriations bills contain numerous policy statements and procedural requirements. However, the most fundamental statements of overall policy for the acquisition system are to be found in:

- The Office of Federal Procurement Policy Act (41 USC 401), which applies to all executive agencies.
- The Armed Services Procurement Act (10 USC Chapter 2301), which basically applies to all Defense agencies and NASA.

Neither of these acts articulates a set of goals as such for the Federal acquisition system. Rather, the acts prescribe overall policies for promoting economy, efficiency, and effectiveness in the acquisition of property and services. The following is a summary of these sections.

STATUTORY POLICIES FOR ACCOMPLISHING SYSTEM GOALS

41 USC 401

It is the policy of the Congress to promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government, by:

- (1) Promoting full and open competition.
- (2) Establishing policies, procedures, and practices which will provide the Government with property and services of the requisite quality, within the time needed, at the lowest reasonable cost.
- (3) Promoting the development of simplified, uniform procurement processes.
- (4) Promoting the participation of small business concerns.
- (5) Supporting the continuing development of a competent, professional workforce.
- (6) Eliminating fraud and waste in the procurement process.
- (7) Eliminating redundant administrative requirements placed on contractor and Federal procurement officials.
- (8) Promoting fair dealings and equitable relationships with the private sector.
- (9) Ensuring that payment is made in a timely manner and only for value received.
- (10) Requiring, to the extent practicable, the use of commercial products to meet the Government's needs.
- (11) Requiring that personal services are obtained in accordance with applicable personnel procedures and not by contract.
- (12) Ensuring the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements.
- (13) Promoting, whenever feasible, the use of specifications which describe needs in terms of functions to be performed or the performance required.

Exhibit 1-9. Statutory Policies for Accomplishing System Goals (41 USC 401).

STATUTORY POLICIES FOR ACCOMPLISHING SYSTEM GOALS

10 USC 2301

- (a) The Congress finds that in order to ensure national defense preparedness, conserve fiscal resources, and enhance defense production capability, it is in the interest of the United States that property and services be acquired for the Department of Defense in the most timely, economic, and efficient manner. It is therefore the policy of the Congress that —
- (1) Full and open competitive procedures shall be used by the Department of Defense in accordance with the requirements of this chapter.
 - (2) Services and property (including weapon systems and associated items) for the Department of Defense be acquired by any kind of contract, other than cost-plus-a-percentage-of-cost contracts, but including multi-year contracts, that will promote the interest of the United States.
 - (3) Contracts, when appropriate, provide incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.
 - (4) Contracts for advance procurement of components, parts, and materials necessary for manufacture or for logistics support of a weapon system should, if feasible and practicable, be entered into in a manner to achieve economic-lot purchases and more efficient production rates.
 - (5) The head of an agency uses advance procurement planning and market research and prepares contract specifications in such a manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.
 - (6) The head of an agency encourages the development and maintenance of a procurement career management program to ensure a professional procurement work force; and
 - (7) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed-bid procedures, does not include in such solicitation a clause providing for the evaluation of prices under the contract for options to purchase additional supplies or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.
- (b) Further, it is the policy of Congress that procurement policies and procedures for the agencies named in section 2303 of this title shall in accordance with the requirements of this chapter—
- (1) Promote full and open competition.
 - (2) Be implemented to support the requirements of such agencies in time of war or national emergency as well as in peacetime.
 - (3) Promote responsiveness of the procurement system to agency needs by simplifying and streamlining procurement processes.

Exhibit 1-10. Statutory Policies for Accomplishing System Goals (10 USC 2301).

GOALS OF THE FEDERAL ACQUISITION PROCESS

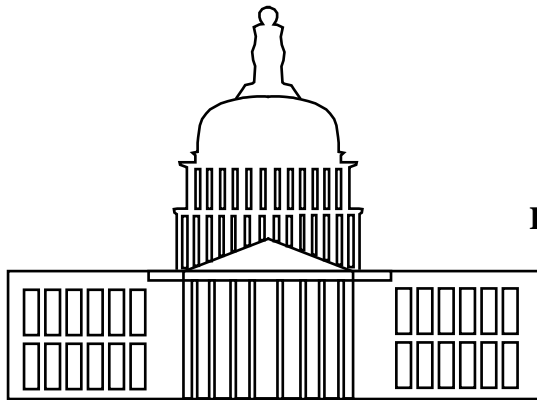
- (4) Promote the attainment and maintenance of essential capability in the defense industrial base and the capability of the United States for industrial mobilization.
- (5) Provide incentives to encourage contractors to take actions and make recommendations that would reduce the costs to the United States relating to the purchase or use of property or services to be acquired under contracts.
- (6) Promote the use of commercial products whenever practicable.
- (7) Require descriptions of agency requirements, whenever practicable, in terms of functions to be performed or performance required.
- (c) Further, it is the policy of Congress that a fair proportion of the purchases and contracts entered into under this chapter be placed with small business concerns.

Exhibit 1-10. Statutory Policies for Accomplishing System Goals (10 USC 2301) (Continued).

CHAPTER 1

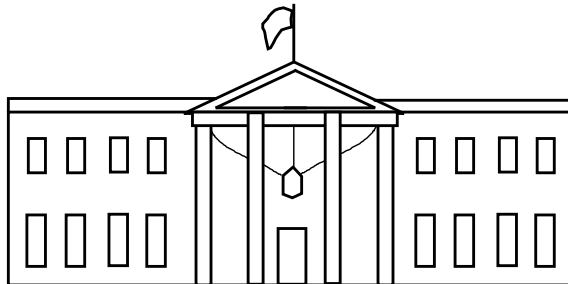
CHAPTER 2

ORGANIZATIONAL ROLES AND RESPONSIBILITIES

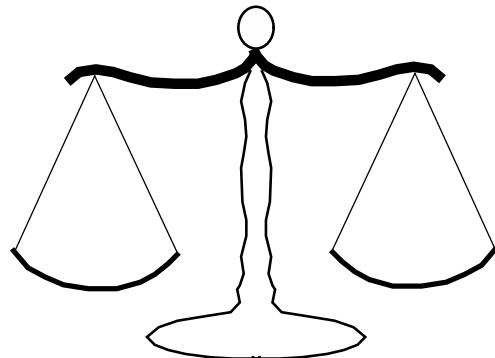


**LEGISLATIVE
BRANCH**

**EXECUTIVE
BRANCH**



**JUDICIAL
BRANCH**



Learning Objectives

- 2-1 State the role of the legislative branch of Government relative to the acquisition process.
- 2-2 State the role of the executive branch of Government relative to the acquisition process.
- 2-3 State the role of the judicial branch of Government relative to the acquisition process.
- 2-4 State the role of the public and non-Government organizations in the acquisition process.

Exhibit 2-1. Learning Objectives.

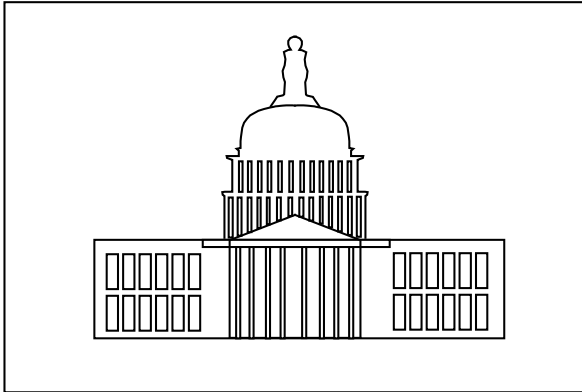
CHAPTER INTRODUCTION

As prescribed by the Constitution, responsibility for the Federal acquisition system is divided among the legislative, the executive, and the judicial branches. The major roles played by the three branches of Government in acquisition are depicted in Exhibit 2-2.

In this chapter, you will learn what those major roles are and the identity of the major Government organizations with acquisition responsibilities. You will also learn about public participation in formulating acquisition policies and procedures.

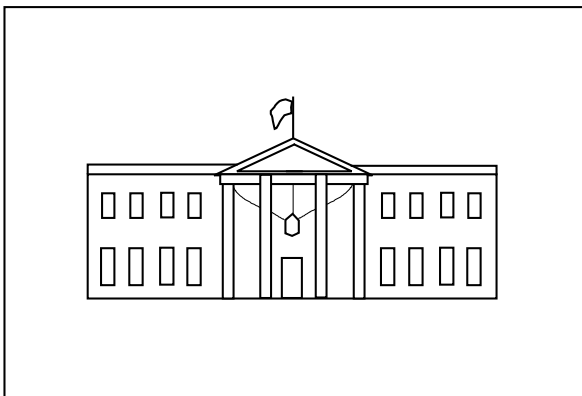
MAJOR ROLES OF THE BRANCHES OF GOVERNMENT IN THE ACQUISITION PROCESS

ROLES



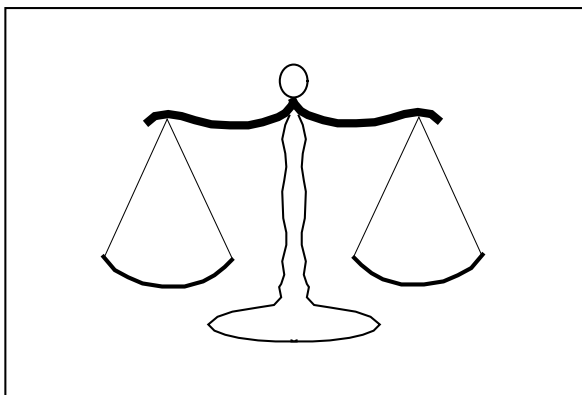
LEGISLATIVE BRANCH -- CONGRESS

- **PASSES LAWS**
- **APPROPRIATES MONEY**



EXECUTIVE BRANCH -- THE PRESIDENT

- **DEVELOPS PLANS, PROGRAMS, AND BUDGETS**
- **EXECUTES BUDGETS AND IMPLEMENTS PLANS AND PROGRAMS**
- **ISSUES EXECUTIVE ORDERS**



JUDICIAL BRANCH -- THE COURTS

- **GIVES MEANING TO LAWS**
- **RENDERS DECISIONS PERTAINING TO THE TERMS OF A CONTRACT**

Exhibit 2-2. Major Roles of the Branches of Government in the Acquisition Process.

2.1 THE LEGISLATIVE BRANCH

The legislative branch includes not only the United States Senate and the United States House of Representatives, but also such entities as the General Accounting Office.

Major constitutional roles are played by Congress that directly affect acquisition:

Laws

Congress passes laws (statutes), generally identified as Public Laws (P.L.). Among other things, these laws establish policies and procedures for the Federal acquisition process. Examples of recent legislation that has had a major impact on Federal acquisitions are:

- P.L. 85-536, the Small Business Act, as amended.
- P.L. 98-369, the Competition In Contracting Act (part of the Deficit Reduction Act of 1984).
- P.L. 100-679, the Office of Federal Procurement Policy Act Amendments of 1988.

Appropriations

Congress exercises considerable influence on acquisition by appropriating funds and placing limits on the uses of those funds. Money may be used only for the purpose for which it was appropriated. Also, money appropriated for acquisition purposes must be obligated by contract awards within the time specified; otherwise, the money will “expire” and cannot be used.

2.1.1 The Legislative Process

The legislative process begins when a Member of the Congress introduces a bill in his or her chamber. The Clerk of the chamber numbers the bill (S# or H.R.#), and the Speaker of the House or President of the Senate assigns it to the appropriate committee.

The committee’s chair typically assigns each new bill to a subcommittee. Members on the subcommittee, with assistance from the committee’s professional and clerical staff, first conduct any necessary factfinding on the proposed bill. Among other things, the subcommittee may request a report on the bill from the concerned departments and agencies and from the General Accounting Office. The subcommittee may also hold public hearings on the bill. The subcommittee then usually meets in executive session to “mark-up” the bill and reach a decision on whether to report the bill, as amended in the marking-up session, or to table it.

ORGANIZATIONAL ROLES AND RESPONSIBILITIES

If the bill is reported to the full committee, the committee then has the choice of reporting the bill to the full chamber—with or without amendments—or of tabling it. If the bill is to be reported favorably to the full chamber, one of the Members writes the committee report which typically describes the purpose and scope of the bill and the reasons for its recommended approval. The report frequently includes a section-by-section analysis of the bill. Other members may file supplemental, minority, or additional views. Committee reports are perhaps the most valuable single element of the law's legislative history, in terms of interpreting the purpose and meaning of the law.

Reported bills are voted upon in the originating Chamber, usually after revision. The passed version then goes to the other chamber, where it is assigned to a committee and the process is repeated. If the second Chamber adopts the bill with substantial or controversial amendments, the bill is assigned to a conference committee made up of members of both Chambers.

When a proposed bill, as submitted or amended, is passed by both Chambers, it is sent to the President for signature. If signed, the bill becomes law. If vetoed, it may or may not become law, depending on whether Congress overrides the veto. Once passed, the bill becomes a public law that may be codified, in whole or in part, in the appropriate sections of the United States Code.

2.1.2 The Budget Process

In appropriating and expending funds, the Federal Government generally operates on a Fiscal Year basis. Presently, the Government's Fiscal Year begins on October 1 and ends on September 30 of the next calendar year.

The Government's budget for any given fiscal year is established and executed in four basic phases:

1. Budget formulation and transmittal to the Congress prior to the fiscal year.
2. Authorization and appropriation of funds by the Congress for the fiscal year.
3. Budget execution during the fiscal year.
4. Review and audit.

CHAPTER 2

Budget Formulation

Every January, the President transmits a budget to the Congress for the fiscal year that begins on the following October 1. This transmittal represents months of collaborative factfinding, planning, and analysis by the President, Office of Management and Budget (OMB), other Executive Office units, and Federal agencies.

This factfinding and planning is performed in part by program managers. Among other things, managers forecast the acquisition requirements of their programs and estimate related costs for the fiscal year to come and for a number of out-years thereafter. Such estimates are made long before the managers initiate the corresponding Purchase Requests (PRs) to contracting offices.

Proposed acquisition requirements and cost estimates enter the stream of information, proposals, evaluations, and policy decisions that influence the President's general guidelines for preparing agency budget requests. The President establishes these guidelines in the spring, at least eighteen months before the budget fiscal year begins. For instance, guidelines for the FY1990 budget were prescribed in the spring of 1988. Under the multi-year budget planning system, the budgetary guidelines cover the coming fiscal year and the four fiscal years beyond.

In the summer, agencies prepare their budget requests. At this time, program managers have another opportunity to revise their forecasts of acquisition requirements and bring them into line with the budgetary guidelines. Agency budget requests are reviewed in detail in the fall by the OMB and presented to the President. The President submits an overall budget to the Congress in January.

Authorization and Appropriations

The Congress begins its formal review of the President's budget proposals when it receives them. The Congress can approve, modify, or disapprove these proposals. It can change funding levels, eliminate programs, or add programs not requested by the President.

Before appropriating funds, the Congress decides whether or not to authorize the program and, if it decides favorably, enacts authorizing legislation. Many programs are authorized for a specified number of years or indefinitely. Other programs require annual authorizing legislation. After authorizing a program in one law, the Congress normally enacts a separate law to appropriate funds to operate the program.

When appropriating funds, the Congress does not vote directly on the level of outlay, but rather on budget authority or authority to incur obligations that will result in immediate or future outlays. Obligations are

ORGANIZATIONAL ROLES AND RESPONSIBILITIES

legally binding commitments (e.g., contract awards) made by Federal agencies during a given period that will require outlays during the same or some future period. Outlays are checks issued or cash disbursed.

For the majority of Federal programs, budget authority becomes available each year only as voted by the Congress. In other cases, the Congress has voted permanent budget authority, under which funds become available annually without further congressional action.

After passing the Congress, authorization and appropriations measures are transmitted to the President for approval or veto. When appropriations are not enacted by the beginning of the fiscal year, the Congress enacts a “continuing resolution” to provide authority so that the affected agencies may continue operations to a specific date or until their regular appropriations are approved.

Budget Execution and Control

The Director of OMB apportions appropriated funds to each agency by time periods and by activities. Such funds are then available for obligation during the fiscal year through such means as contract awards.

However, not all of the new budget authority for the fiscal year may be obligated or spent in that year. For example, the budget authority for many major construction and procurement programs covers the estimated full cost of projects at the time they are started. Likewise, budget authority for most long-term contracts covers the estimated maximum obligation of the Government. As a result, a large amount of budget authority carries over from one year to the next. Most is earmarked for specific uses and is therefore not available for other programs.

For Federal Contracting Officers (COs), this complicates the task of reviewing PRs. COs must ensure that funds earmarked for the contract are in fact properly obligated for that acquisition (see Section 6.2.1.2 of this text).

Review and Audit

Individual agencies are responsible for assuring that the obligations they incur and the resulting outlays are in accordance with laws and regulations. Within most agencies, Inspector Generals audit programs. For the Government as a whole, OMB reviews program and financial reports. In addition, Congressional oversight takes such forms as committee hearings and GAO audits, as described in the next sections.

CHAPTER 2

2.1.3 Committees

The Congress has established a number of standing committees. Many committees create subcommittees to focus on specific issues. Committees and subcommittees are assisted by appointed staff who have various administrative, technical, or legal skills.

Because acquisition (particularly defense) represents such a large portion of the Federal budget, several committees and subcommittees monitor procurement and contracting matters. Some of the more important of these committees are shown in Exhibit 2-3.

CONGRESSIONAL COMMITTEES THAT MONITOR PROCUREMENT AND CONTRACTING MATTERS

Senate Committees:

- Armed Services.
- Governmental Affairs.
- Small Business.

House of Representatives Committees:

- Armed Services.
- Government Operations.
- Small Business.

*Exhibit 2-3. Congressional Committees that Monitor
Procurement and Contracting Matters.*

2.1.4 GAO

In addition to the committee system, Congress created the General Accounting Office (GAO). The GAO is headed by the Comptroller General of the United States. GAO is informally referred to as “the watchdog for the Congress.” GAO performs several functions directly related to the acquisition process.

Oversight and Investigations

GAO audits and investigates agency programs and management, focusing on fraud and mismanagement.

Protests

The Comptroller General is authorized to recommend decisions to agency heads on protests that are filed against the Government with the GAO pertaining to the award or non-award of contracts (see Chapter 7). Decisions of the Comptroller General are an important element of procurement-related case law, as they establish precedents and interpretations of policies that have a Governmentwide impact. Contracting officers often research and cite decisions of the Comptroller General on protests when making potentially controversial decisions relative to the solicitation or award of a contract.

2.2 THE EXECUTIVE BRANCH

The executive branch, headed by the President of the United States, plays several major roles relative to acquisitions. Among others, these roles include:

- Developing plans, programs, and budgets for consideration by the Congress.
- Executing budgets and implementing the plans and programs authorized by the Congress, including:
 - Determining whether to meet program needs through in-house performance or by contracting.
 - Awarding and administering contracts.
- Supplementing and augmenting statutory acquisition policies and procedures through such means as Executive Orders.
- Developing and maintaining the Federal acquisition regulatory system to implement statutory and executive branch policies and procedures for the Federal acquisition process.

The principal organizations and individuals in the executive branch that play a Governmentwide role in acquisition are described below. (Roles and responsibilities for the acquisition process within agencies are discussed in Chapter 4).

The President

1. Establishes Governmentwide acquisition policies and procedures. For example, some Presidents have issued executive orders on acquisition issues (see Chapter 3, Exhibit 3-3).
2. Makes political and management decisions relative to programs and related budget requests.
3. Appoints agency heads and other officials who have direct or indirect management control over acquisition programs.

CHAPTER 2

The Office of Management and Budget (OMB)

1. Recommends programs and funding levels for programs.
2. Monitors programs and, when appropriate, adjusts funding levels.
3. Develops and issues policy guidance on such management concerns as paperwork reduction, grants management, and, through the Office of Federal Procurement Policy, on procurement.
4. Reviews proposed regulations for compliance with policy guidance.

The Office of Federal Procurement Policy (OFPP)

The OFPP is part of OMB; its Administrator is appointed by the President. OFPP provides leadership and direction to Federal procurement programs. It does so, in part, through OMB Circulars such as Circular A-109, "Major Systems Acquisition" and OMB Circular A-76, "Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government." To carry out its obligations, OFPP's responsibilities include those listed in Exhibit 2-4.

OFPP RESPONSIBILITIES

- Provides overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies.
- Prescribes Governmentwide procurement policies for implementation in the FAR.
- Prescribes Governmentwide procurement regulations, procedures and forms, when the FAR Council fails to reach a timely agreement on the regulation for implementing a Governmentwide procurement policy.
- Provides leadership in the establishment, development and maintenance of the FAR.
- Coordinates the development of Governmentwide procurement systems standards.
- Provides leadership and coordination in the formulation of executive branch positions on procurement-related legislation.
- Oversees the collection, development, and dissemination of procurement data through the Federal Procurement Data System.
- Oversees the Federal Acquisition Institute to support the development of a competent, professional procurement workforce.
- Solicits the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms.
- Develops standard contract forms and language.
- Develops innovative procurement methods and procedures to be tested by selected executive agencies.
- Advises the President and the Congress on matters relating to procurement.

Exhibit 2-4. OFPP Responsibilities.

Board of Contract Appeals

The Contract Disputes Act provides the statutory authority for a Board of Contract Appeals (BCA) to resolve contract disputes between the CO and the contractor. Several of the larger agencies have their own independent BCAs. Agencies that do not have a BCA use the BCA of another agency when needed. Contracting officers often research and cite decisions of the Boards on claims when interpreting and administering contracts.

The General Services Board of Contract Appeals (GSBCA) also has statutory authority to hear protests related to the acquisition of automatic data processing (ADP) equipment or related resources, which may be filed by the interested party either with the GSBCA or the GAO (see Section 2.1.4).

Regulations on protests and disputes are covered in FAR Part 33.

CHAPTER 2

The Federal Acquisition Regulatory Council

This council is comprised of the Administrator for Federal Procurement Policy, the Secretary of Defense, the Administrator of National Aeronautics and Space, and the Administrator of General Services. As provided in § 25 of the Office of Federal Procurement Policy Act, the Council assists “in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.”

The Attorney General of the United States

The Attorney General represents the executive branch in matters pertaining to the constitutional aspects of acquisition legislation or in the prosecution of acquisition-related fraud.

Executive Agency Heads

The head of each executive agency carries out Governmentwide acquisition policies, procedures, and regulations. In addition, agency heads, and their designees, establish supplementary acquisition regulations and other internal policies and procedures and are responsible for fulfilling agency acquisitional needs. See Exhibit 2-5 for the definition of “head of the agency” (FAR Part 2).

DEFINITION OF HEAD OF AGENCY

“Head of the agency” (also called “agency head”) means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency and, for the Department of Defense, the Under Secretary and any Assistant Secretary of the Departments of the Army, Navy, and Air Force and the Director and Deputy Director of Defense agencies; and the term “authorized representative” means any person, persons, or board (other than the contracting officer) authorized to act for the head of the agency or Secretary.

Exhibit 2-5. Definition of Head of the Agency, FAR 2.101.

2.3 THE JUDICIAL BRANCH

The judicial branch tries all legal cases that involve the Government. For example, when the contracting officer or cognizant BCA cannot administratively settle a dispute between the Government and one of its contractors under the terms and conditions of the contract, the issue may be taken to court (generally as provided for by the “Disputes” clause of the contract). The court resolves such disputes based on Federal statutes, case law, and the terms and conditions of the contract.

ORGANIZATIONAL ROLES AND RESPONSIBILITIES

If the contractor chooses to bypass the BCA and go directly to court, the case is heard by the United States Claims Court. To appeal either a BCA or Court of Claims decision, the appellant (either the contractor or the Government) files with the United States Court of Appeals for the Federal Circuit. Court decisions give meaning to (or serve to interpret):

- Laws passed by the legislative branch, or
- Policies and regulations originated by the executive branch.

In addition to interpreting laws, a court may render decisions pertaining to the terms and conditions of a specific contract. COs often refer to these decisions as they attempt to resolve protests or disputes.

2.4 PUBLIC PARTICIPATION

Organizations and individuals in the private (non-Government) sector also play a role in the acquisition process. Participants include:

- Trade associations.
- Professional societies.
- Companies.
- Individuals.

Organizations and individuals can influence Congress to pass or alter legislation. They can also influence how the legislation is implemented. In addition, the public is invited to comment on proposed rule changes, as published in the Federal Register (see Chapter 3). These comments are taken into consideration when the final rule is prepared for publication

CHAPTER 2

CHAPTER 3

BASIC STATUTES AND REGULATIONS

PART 52

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.000 Scope of part.

This part (a) gives instructions for using provisions and clauses in solicitations and/or contracts, (b) sets forth the solicitation provisions and contract clauses prescribed by this regulation, and (c) presents a matrix listing the FAR provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

SUBPART 52.1—INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

52.100 Scope of subpart.

This subpart (a) gives instructions for using Part 52, including the explanation and use of provision and clause numbers, prescriptions, prefaces, and the matrix; (b) prescribes procedures for incorporating, identifying, and modifying provisions and clauses in solicitations and contracts, and for using alternates; and (c) describes the derivation of FAR provisions and clauses.

52.101 Using Part 52.

(a) *Definitions.* “Alternate” means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It (1) adds wording to, (2) deletes wording from, or (3) substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see 52.105(a)).

“Contract clause” or “clause” means a term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award.

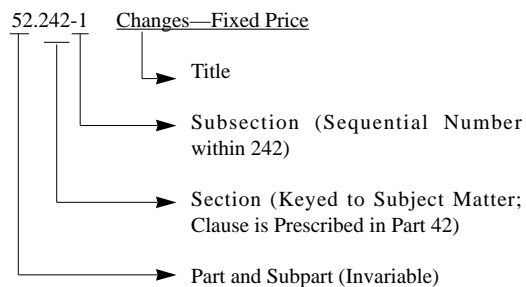
“Modification,” as used in this subpart, means a minor change in the details of a provision or clause that is specifically authorized by the FAR and does not alter the substance of the provision or clause (see 52.104).

“Solicitation provision” or “provision” means a term or condition used only in solicitations and applying only before contract award.

“Substantially as follows” or “substantially the same as,” when used in the prescription and preface of a provi-

sion or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; *provided*, that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

(b) *Numbering.* (1) *FAR provisions and clauses.* Subpart 52.2 sets forth the texts of all FAR provisions and clauses, each in its own separate subsection. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR. Each FAR provision or clause is uniquely identified. All FAR provision and clause numbers begin with “52.2,” since the texts of all FAR provisions and clauses appear in Subpart 52.2. The next two digits of the provision or clause number correspond to the number of the FAR subject part in which the provision or clause is prescribed. The FAR provision or clause number is then completed by a hyphen and a sequential number assigned within each section of Subpart 52.2. The following example illustrates the makeup of the FAR provision or clause number:



(2)(i) *Provisions or clauses that supplement the FAR.* Provisions or clauses that supplement the FAR are—

(A) Prescribed and included in authorized agency acquisition regulations issued within an agency to satisfy the specific needs of the agency as whole;

(B) Prescribed and included in a regulation issued by a suborganization of an agency to satisfy the needs of that particular suborganization; or

(C) Developed for use at a suborganizational

52-1

Exhibit 3-1. Sample Page of the FAR.

Learning Objectives

- 3-1 Identify and describe the four principal sources of Federal Contract Law.
- 3-2 Identify the basic statutes that control the fundamentals of purchasing and contracting.
- 3-3 Describe the FAR system, including
 - Sources.
 - Maintenance.
 - Supplements.
 - Usage.

Exhibit 3-2. Learning Objectives.

CHAPTER INTRODUCTION

At the front of this chapter is a copy of the first page of the Federal Acquisition Regulation (FAR). All personnel involved in procurement are required to follow those regulations. This chapter focuses on the Federal Acquisition Regulatory System and how it is used.

The Government's ability to procure supplies and services rests upon law and is limited by law. There are literally hundreds of statutes and thousands of pages of regulations that control or affect the process. No one course can effectively cover all of that material and no one person knows or is capable of knowing all of the statutes and regulations. In fact, no one segment of acquisition (construction, ADP, supplies, etc.) uses or is affected by them all.

These laws are necessary in part because of the unique status of the Government. The Government is a sovereign body, or body supreme. As such, it has special powers and immunities. These give it certain advantages in the making of contracts but also impose unique limitations on its contractual authority.

This chapter presents the:

- Sources of Federal Contract Law.
- Basic statutes.
- The Federal Acquisition Regulatory System.

3.1 THE SOURCES OF FEDERAL CONTRACT LAW

There are four sources of Federal contract law:

- The Constitution.
- Statutes.
- Administrative Law.
- Common Law.

3.1.1 The Constitution

The Constitution of the United States is the supreme law of the land. It does not, however, specifically address whether the Government has the right to enter into contracts. It was not until 1831 that the Supreme Court, in a “landmark” decision (United States versus Tingey), declared that the Federal Government has:

- **Inherent power**, based on sovereignty, to enter into contracts, and
- **Implied powers**, as necessary to the proper performance of its duties.

The Court also stated guidelines to apply to determine the **validity** of a Government contract:

- Is the Government authorized to act?
- Is the act performed by someone having the authority to act?

Both of these must be answered in the affirmative and both apply today.

3.1.2 Statutes

A statute is a law enacted by the legislative branch of Government and signed by the President. The statute is identified by its public law number. For example, Public Law 93-400 is the Office of Federal Procurement Policy Act (OFPP), enacted in 1974. The various sections of a public law are later included in the appropriate U.S. Code or Codes. Part of the P.L. 93-420 has been “codified” at 41 U.S.C. 401 (see Chapter 1). The OFPP Act has been amended by several laws, most notably by the “Office of Federal Procurement Policy Act Amendments of 1983” (P.L. 98-191) and by the “Office of Federal Procurement Policy Act Amendments of 1988” (P.L. 100-679).

Section 3.2 summarizes the legislative history of statutes that govern the Federal acquisition system and identifies some of the most important statutes.

3.1.3 Administrative Law

Administrative law provides the third basic source of Federal Contract Law. Sources of administrative law include:

- Executive Orders signed by the President.
- Rules and regulations.
- Decisions by the Comptroller General and administrative law judges.

Executive Orders

Executive Orders (E.O.) establish policies to be followed by the executive agencies. E.O.'s stay in effect unless rescinded by the signing President or a successor President. Few E.O.'s have been issued that directly affect procurement. Exhibit 3-3 lists some of the most important of such EO's.

KEY EXECUTIVE ORDERS	
E.O. 10582	<p>“Prescribing Uniform Procedures for Certain Determinations under the Buy-American Act”, December 17, 1954 (as amended).</p> <p>Establishes Governmentwide rules for determining when, under the “Buy-American” Act, Federal departments and agencies may purchase materials of foreign origin for public use within the U.S.</p>
E.O. 11246	<p>“Equal Employment Opportunity”, September 24, 1962 (as amended).</p> <p>Requires contractors to agree not to discriminate on the basis of race, color, religion, sex, or national origin in their employment practices.</p>
E.O. 11141	<p>“Declaring a Public Policy Against Discrimination on the Basis of Age”, February 12, 1964.</p> <p>As a matter of public policy, precludes contractors and subcontractors engaged in the performance of public contracts from discriminating on the basis of age in their employment practices.</p>
E.O. 11701	<p>“Employment of Veterans by Federal Agencies and Government Contractors and Subcontractors”, January 24, 1973.</p> <p>Provides direction to the Department of Labor and the heads of executive agencies with respect to the employment of veterans.</p>
E.O. 11738	<p>“Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans,” September 10, 1973.</p> <p>Prohibits contracting for goods, materials, or services which would be performed in whole or in part in a facility that has been designed by EPA as being in violation of environmental laws.</p>
E.O. 12073	<p>“Federal Procurement In Labor Surplus Areas”, August 16, 1978.</p> <p>Requires executive agencies to encourage procurement set-asides in labor surplus areas and assigns responsibilities for accomplishing this purpose.</p>

Exhibit 3-3. Key Executive Orders.

KEY EXECUTIVE ORDERS (CONTINUED)	
E.O. 12138	<p>“Creating a National Women’s Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating, and Implementing a National Program for Women’s Business Enterprise,” May 18, 1979.</p> <p>Among other things, encourages the awarding of subcontracts under Federal prime contracts to women-owned enterprises.</p>
E.O. 12352	<p>“Federal Procurement Reforms”, March 17, 1982.</p> <ol style="list-style-type: none"> 1. Directs the head of each executive agency to designate a Procurement Executive with agency-wide responsibility to: <ul style="list-style-type: none"> • Oversee the development of procurement systems. • Evaluate system performance in accordance with approved criteria. • Enhance career management of the workforce, and • Certify to the agency head that procurement systems meet approved criteria. 2. Directs agency heads to take a number of other measures to make procurement more effective in support of mission accomplishment, including the establishment of procurement system criteria and career management programs. 3. Directs the Office of Management and Budget to identify desirable Government-wide procurement system criteria, review agency implementation of the EO, and perform other such functions.
E.O. 12448	<p>“Exercise of Authority Under Section 218 of Title 18, United States Code”, November 4, 1983.</p> <p>Authorizes Federal agencies to promulgate regulations for voiding or rescinding contracts obtained through bribery, graft or conflict of interest.</p>

Exhibit 3-3. Key Executive Orders (Continued).

Rules and Regulations Agency heads are empowered by statute or by Presidential order to prepare and issue **rules and regulations**. The Government is required under the Administrative Procedures Act to publish most, but not all, such rules and regulations in both of the following publications.

The Federal Register The FR is a daily Government publication. It provides a uniform system for making regulations and legal notices issued by Federal agencies available to the public. Proposed rules are published so that the public can comment on them. After comments are received and evaluated, final rules are published. Some rules are based on statute and some on policies flowing from OMB, OFPP, the agencies, etc.

The Code of Federal Regulations (CFR) The CFR is a catalog or codification of the rules (published in the Federal Register) concerning the executive departments and agencies of the Federal Government. The CFR is organized as indicated below:

- The CFR is divided into 50 **titles**. Each title represents broad areas subject to regulation by the Federal Government.
- Each title is divided into **chapters**. Each chapter usually bears the name of the issuing agency and is further subdivided into parts covering specific regulatory areas.

A number of rules and regulations apply to the Federal acquisition process and have Governmentwide force and effect. These are summarized in Exhibit 3-4.

RULES AND REGULATIONS THAT APPLY TO FEDERAL PROCUREMENTS		
<i>Title</i>	<i>CFR §</i>	<i>Coverage</i>
OFPP Policy Letters	N/A	Establish Governmentwide policies for acquiring supplies and services.
The Federal Acquisition Regulation (FAR)	48 CFR Ch. 1	Establish Governmentwide rules and regulations that apply generally to the acquisition of supplies and services (see section 3.3 of this chapter).
FAR Supplements	48 CFR Chs. 2-63	Establish rules and regulations that apply generally to the acquisition of supplies and services within the issuing Federal department or agency.
Cost Accounting Standards	48 CFR Ch. 99	Establish standards for the cost accounting practices of certain contractors and subcontractors, along with procedures for (a) disclosing those practices to the Government and (b) determining the cost impact of any changes necessary to comply with the standards or that are otherwise contemplated by the contractor. ¹
Supply and Procurement (from the FPMR—Federal Property Management Regulations)	41 CFR Ch. 101 Subch. E (§101-25 through 101-33)	Prescribes additional Governmentwide rules for: <ul style="list-style-type: none"> • Determining the method of supply. • Interagency purchases. • Purchase vs. lease determinations. • Acquiring supplies and services from GSA and other interagency supply sources. • Inventory management. • Storage and distribution. • Federal product descriptions (e.g., Federal Specifications, CIDs, etc.). • Inspection and quality control. • Acquisition of public utilities.
Labor	29 CFR 41 CFR ch. 50	Establishes rules for socioeconomic objectives and related programs under its cognizance, such as the Fair Labor Standards Act.
Small Business Administration (SBA)	13 CFR	Establishes rules for socioeconomic objectives and related programs under its cognizance, such as the small business set-aside program.

*Exhibit 3-4. Key Regulations.*¹FAC 90-12

RULES AND REGULATIONS THAT APPLY TO FEDERAL PROCUREMENTS (CONTINUED)		
<i>Title</i>	<i>CFR §</i>	<i>Coverage</i>
Federal Information Resources Management Regulation	41 CFR Ch. 201	Prescribes special rules for the acquisition of automated data processing and telecommunications software and hardware. (See App. A to Part 39) ¹
Rules of the GSA Board of Contract Appeals	48 CFR Ch. 61	Parts 6100-6199, among other things, establish the rules for the filing and hearing of protests of ADP awards.
Acquisition of Real Property (from the FPMR)	41 CFR Ch. 101 § 101-18	Prescribes special rules for the acquisition of real property.

Exhibit 3-4. Key Regulations (Continued).

Administrative Law Decisions	Under several statutes (most notably the Disputes Act and the Competition in Contracting Act), administrative forums have been established to hear and decide claims, protests, and other questions involving the interpretation of contracts and Federal laws, rules, and regulations that apply to contracts. Among others, these include Boards of Contract Appeals and the General Accounting Office.
Boards of Contract Appeals (BCAs)	BCAs render decisions on disputes arising under contracts. If there is a disagreement between a contractor and an agency as to a contractual requirement or the meaning of a contract, the contractor will ask the CO for a final decision. If the contractor is not satisfied by the decision, an appeal is filed by the contractor with the appropriate BCA under the “Disputes” clause of the contract. In addition to disputes, the General Services BCA renders decisions on protests involving procurement actions relative to certain aspects of ADPE.
The Comptroller General (Comp. Gen.)	The Comptroller General of the General Accounting Office prepares recommendations on protests for consideration by the agency. These recommendations are published as “Comptroller General Decisions.” The Comptroller General's recommendations on protests often function as “precedents” for interpreting statutes and other types of law.

¹FAC 90-5

3.1.4 Common Law

The final source of Federal Contract Law includes decisions handed down by judges in courts of law and the application of “common” law. Today, the courts are a more important source of contract law in the private sector than in the Federal sector. This is because the Disputes Act and other such laws have established administrative procedures and forums for deciding protests of Federal contract award and claims arising under or related to a Federal contract. However, when the courts agree to hear a case and decide that the case involves issues within their jurisdiction, the courts nonetheless can override administrative law judges or the Comptroller General and establish binding precedents.

3.2 BASIC STATUTES

This section conveys a brief history of Federal acquisition, an overview of the statutes that presently control procurement and contracting, and reviews of the more critical statutes.

3.2.1 Legislative History of Federal Acquisition

Writers and lecturers sometimes refer to an “early contract” to illustrate what contracting was like in the “old days.” They will refer to a two page Government contract between the Army and the Wright brothers to develop an airplane for military use. Similarly, an early example of contract administration requirements is reflected in a letter “dispatching” a Navy captain to Philadelphia to make sure the company building a naval vessel “accomplished the work in good order.” You will see in a later chapter that contract administration is now much more complex.

The evolution from simple, short contracts and contracting procedures to the complex, lengthy contracts and processes encountered today began with World War II. This war was a milestone event that brought about significant changes in the Federal Acquisition Process.

Pre-World War II

From the late 1700s until the 1940s, the Department of the Treasury was responsible for the procurement of supplies and services for the U.S. Government. In addition, the Department of War and the Department of the Navy were authorized to contract for goods and services for military use.

BASIC STATUTES AND REGULATIONS

In the early years of our Government, there were few controls on contracting, and favoritism soon became a problem. In 1809, Congress established the requirement for competition in Government procurement. Congress enacted legislation that required all purchases and contracts for supplies and services to be made by either:

- Open purchasing.
- Advertising for offers.

Exhibit 3-5 defines these terms.

The 1809 legislation was the first attempt to avoid favoritism by requiring competition. However, more controls would be needed. In subsequent years, the Federal Government repeatedly faced procurement scandals brought about by undisclosed purchases made at inflated prices. In fact, it was found that some members of Congress had benefited by obtaining Government contracts for their friends.

TERMS USED TO DESCRIBE COMPETITION	
Open Purchasing	<ul style="list-style-type: none">• Going to the open market.• Buying from merchants at the established or prevailing market price.
Advertising for Offers	<ul style="list-style-type: none">• Publicly advertising a Government requirement.• Requesting interested parties to respond by submitting bids.

Exhibit 3-5. Terms Used to Describe Competition.

Congress responded by passing the Civil Sundry and Appropriations Act of 1861, which, as amended, is referred to as Revised Statute (R.S.) 3709: This was the primary law controlling Government contracting until the 1940s. This act required:

- Open solicitation of sealed bids.
- Public opening of bids received.
- Contract award to be made to the low bidder.

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The three-part process became known as “formal advertising” and was referred to by that name until 1985, when the Competition in Contracting Act (CICA) formally renamed it “sealed bidding.”

R.S. 3709 did provide the following exceptions to the above requirements:

- Personal services.
- Public exigencies (urgencies).
- Small purchases.

There were few changes to Government contracting regulation for a number of years. Then, in the early 1900s (particularly the 1930s), socioeconomic laws, including the Buy American Act, and several laws that are beneficial to labor, were added to contracting regulations.

World War II

In 1941, Congress enacted the first War Powers Act. Where necessary to facilitate prosecution of the war, the Act permitted the President to authorize certain departments and agencies to make procurements with no contract law requirements concerning the making, performing, amending or modifying contracts (e.g., without regard to requirements for formal advertising). Thus, the procurement of supplies, material, and equipment for the defense effort approximated the freedom to bargain, a custom enjoyed in the private sector.

While procurement in time of war initiated the use of the most expedient purchase methods, World War II also brought about an era of technological advancements. This meant, for example, moving away from “inventory replenishment” and toward the introduction of new equipment and new supplies. Formal advertising procedures were not appropriate for these such procurements.

Post World War II

At the end of the war, it was apparent that agencies concerned with wartime procurement demonstrated the ability to use judgment, discretion, and sound business sense under the broad procurement powers granted them during the war. In keeping with this development, legislation was proposed in Congress to authorize negotiated procurements on an “exception” basis. Some of the exceptions that permitted negotiations were:

- National emergency.
- Public exigency (urgency).
- Experimental, developmental, and research work.
- Food (perishable or nonperishable subsistence supplies).

Concurrently, the size and scope of procurement had radically changed. The armed services, even post-war, were spending many times more dollars than were spent by all of Government in pre-war years. Therefore, for the first time, Congress decided to pass comprehensive procurement legislation that would provide for contracting by negotiation.

In 1947, the Armed Services Procurement Act (ASPA) (Title 10 of the U.S. Code, starting at Section 2301) established authority for the Department of Defense to:

- Contract for the acquisition of property and services needed for the national defense.
- Write regulations to implement this act.

The DoD implemented the Act by issuing the “Armed Services Procurement Regulation” (ASPR), subsequently renamed the “Defense Acquisition Regulation” (DAR). The DAR and associated regulations favored contracting by formal advertising, but permitted Contracting Officers in Defense agencies to negotiate contracts under one or more of 17 exceptions to the requirement for formal advertising.

Both the Congress and the executive branches quickly recognized that procurement was also a “growing business” for the civilian agencies. In 1949, Congress enacted the Federal Property and Administrative Services Act (FPASA), codified primarily in Title 41 (some in Title 40) of the U.S. Code. FPASA established the General Services Administration, instead of the Department of the Treasury, as the agency primarily responsible for acquisition, supply, and construction, and for disposal of materials and equipment for civilian agencies. The FPASA allowed Contracting Officers in civilian agencies to negotiate contracts if any one of 15 exceptions applied to the acquisition. Pursuant to the FPASA, GSA prepared and issued the Federal Procurement Regulation (FPR), which applied to civilian agencies.

Although some socioeconomic regulations became effective in the 1900s, none had a significant impact on contracting procedures. However, in 1950, the Small Business Act was passed. In 1978, Public Law 95-507 made extensive changes to the Small Business Act. Since then, numerous statutes have included changes to the Act.

The Office of Federal Procurement Policy (OFPP) Act was passed in 1974. This Act created OFPP and made it a part of the Office of Management and Budget. There have been several amendments to the

Act which have strengthened its role as the central organization in the executive branch for acquisition and procurement and public affairs. These were noted in Chapter 2.

3.2.2 Basic Statutes

The following four statutes govern the Federal acquisition process. They are listed here with references to locations in the United States Code (U.S.C.) in which their provisions have predominantly been codified.

Act	Acquisition-Related Provisions
Armed Services Procurement Act	10 U.S.C. §2301 et. seq.
Federal Property and Administrative Services Act	41 U.S.C. §201 et. seq.
Office of Federal Procurement Policy Act	41 U.S.C. §401 et. seq.
Small Business Act	15 U.S.C. §631 et. seq.

These statutes are frequently amended. Normally, you will not deal directly with the language of these statutes but rather with the FAR provisions that implement them.

In addition to the four statutes mentioned above, there are nearly 500 other statutes that apply to one or more aspects of Federal procurement. Exhibit 3-6 summarizes some of the better known of these statutes. Except where noted, the names of these acts are taken from title 50, United States Code, “Acts Cited By Popular Name.” In that table, you will find both the name of the act and the identity of sections in the United States Code in which the act’s provisions have been codified.

ACQUISITION-RELATED STATUTES	
<i>Statute</i>	<i>Among Its Purposes:</i>
An Act Concerning Public Contracts (1808, 2 Stat. 484)*	Prohibits members of Congress from benefiting from Government contracts.
Anti-Deficiency Act (1906)	Prohibits commitments unless funding is available. Provides for personal liability.
Anti-Kickback Act (1934)	Prohibits “pay-offs” to get a Government contract.
Assignment of Claims Act (1940)	Provides a basis for contractors to obtain loans from private sector lenders against future contract payments, with authorization for the Government to make such payments directly to the lending institution.
Authorization and Appropriations Acts (various)*	Often serve as a vehicle for amending basic procurement statutes to prescribe new or amended policies and procedures. For example, an appropriations act in 1861 (12 Stat. 220) forbids the making of a contract unless authorized by law or under an appropriation adequate to its fulfillment. An appropriations act in 1868 (15 Stat. 177) states that no contract may bind the Government to pay an amount in excess of that appropriated. These requirements are still in force today and have been codified as sections 11 and 12 of title 41, United States Code.
Buy American Act (1933)	Provides preference for domestic over foreign materials when acquiring supplies for the Government.
Cargo Preference Act (1954)	Requires shipment of all military and at least half of other goods in U.S. vessels.
Clean Air Act Amendments (1970)	Prohibits contracting with a company convicted of criminal violation of air pollution standards.

Exhibit 3-6. Acquisition-Related Statutes.

* Titles that do not appear in Title 50, United States Code, among the "Acts Cited By Popular Name."

ACQUISITION-RELATED STATUTES	
<i>Statute</i>	<i>Among Its Purposes:</i>
Competition in Contracting Act (1984)	<ul style="list-style-type: none"> • Makes “full and open” competition an underlying objective in procurement. • Establishes Competition Advocates at high, responsible levels in every agency, with authority, in some instances, to disapprove proposed procurements that would not achieve “full and open competition.” • Imposes strict limits on the use of “sole source” procurements.
Contract Disputes Act (1978)	Establishes a procedure and forums for resolving claims arising under or related to a contract.
Crimes and Criminal Procedure Act (1948)	Requires mandatory purchase of specific supplies from Federal Prison Industries, Inc.
Davis-Bacon Act (1931)	Prescribes minimum wages, benefits, and working conditions on construction contracts.
Defense Production Act (1970)	Established a Cost Accounting Standards Board and authorized the promulgation of cost accounting standards that apply to certain Federal contracts and contractors. Authority for the Cost Accounting Standards Board now rests in the OFPP Act, as amended (P.L. 100-679).
Freedom of Information Act (1966)	Provides for making certain information on Government activities, including acquisition-related activities, available to the public.
Miller Act (1935)	Requires contractors to provide payment and performance bonds on Government construction contracts.
Patents Act (1980)	Defines patent rights with respect to inventions made with Federal assistance, in terms of the conditions under which a small business or non-profit entity may elect to retain title to the invention and limits on that right (e.g., royalty free use of the invention by the Government and “march-in” rights).
Program Fraud Civil Remedies Act (1986)	Strengthens ability of Government to prosecute contract-related fraud.

Exhibit 3-6. Acquisition-Related Statutes (Continued).

ACQUISITION-RELATED STATUTES	
<i>Statute</i>	<i>Among Its Purposes:</i>
Prompt Payment Act (1982)	Assists contractors, especially small businesses, in obtaining timely payment for contract work.
Service Contract Act (1965)	For covered service contracts over \$2,500, mandates clauses on minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates.
Trade Agreements Act (1979)	Waiver of the Buy American Act for certain supply contracts.
Truth in Negotiations Act (1962)	Requires offerors or contractors to submit accurate, complete, and current cost or pricing data and to certify the data.
Tucker Act (Claims) (1887)	Provides authority for the claims court to render judgements on claims against the United States.
Wagner-O'Day Act (1938)	Requires purchase of products made by blind and other handicapped persons.
Walsh-Healy Public Contracts Act (1936)	Prescribe minimum wage, hours, age, and working conditions for supply contracts.
Work Hours and Safety Act (1962)	Prescribe minimum wage, hours, age, and working conditions for laborers and mechanics.

Exhibit 3-6. Acquisition-Related Statutes (Continued).

Exhibit 3-7 summarizes the history of acquisition statutes and regulations.

MILESTONES IN THE DEVELOPMENT OF FEDERAL ACQUISITION POLICIES	
1700s - 1940s	Department of Treasury is responsible for procurement and acquisition.
1809	Congress requires competition.
1861	Congress requires formal advertising (sealed bidding).
1941	War Powers Act permits purchasing without restraint.
1947	DoD authorized to procure property and services for national defense.
1949	GSA given responsibility for civilian acquisition (GSA established).
1950	Small Business Act.
1974	Office of Federal Procurement Policy (OFPP) established as part of OMB to provide leadership and direction to Federal procurement programs.
1985	Competition in Contracting Act (CICA) makes "full and open" competition the principal objective in Government procurement.

Exhibit 3-7. Milestones in the Development of Federal Acquisition Policies.

3.2.3 Small Business Act

As noted in Chapter 1 of this text, there are many statutes that implement social and economic requirements and goals. Government contracts and, in many cases, subcontracts, are used to carry them out. Some of the statutes require the CO to take specific actions (e.g., the Small Business Act) while others have a direct effect on the contractor only (e.g., the Clean Air Act).

BASIC STATUTES AND REGULATIONS

The Small Business Act, as amended, is generally considered to be the most “active” socioeconomic statute because it requires both parties to take specific action; i.e., the Government in the award of contracts, and the prime contractor in the award of subcontracts.

Under the Act, the Government is required to:

Under the Act, the Government is required to:

1. Establish, within each agency, an Office of Small and Disadvantaged Business Utilization
2. Afford small business concerns an equitable opportunity to compete for contracts (when appropriate or practicable) by :
 - Dividing proposed acquisitions into reasonably small lots to permit offers on quantities less than the total requirement.
 - Planning acquisitions so that more than one small business concern may perform the work within the surety amounts guaranteed by the Small Business Administration (SBA).
 - Establishing reasonable delivery schedules so that small business concerns will be encouraged to compete.
 - Encouraging prime contractors to subcontract with small business concerns.
 - Permitting SBA to assign procurement center representatives to contracting activities or contract administration offices to carry out SBA policies and procedures.
 - Reserving small purchases (those not in excess of \$25,000) for participation by small business concerns.
 - Setting selected acquisitions aside (totally or partially) for exclusive competition among small business concerns.
 - Referring a CO’s determination of a contractor’s nonresponsibility to the SBA for a decision if the firm found to be nonresponsible is a small business concern.
 - Establishing dollar goals for awarding contracts to small and small disadvantaged business concerns.
 - Requiring, at certain dollar thresholds, the offeror in line for the award of a prime contract to develop plans for placing subcontracts with small and small disadvantaged business concerns.
 - Awarding contracts to small, minority-owned, business concerns (known as “8(a)” contractors because the requirement is in Section 8(a) of the Small Business Act).

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Under the Act, contractors are required to:

1. Comply with any requirements in the contract for considering small business concerns (especially those concerns that are women-owned or disadvantaged) in awarding subcontracts (see FAR clauses 52.219-8 and 52.219-13).
2. Implement the subcontracting plan (when required) it submitted when competing for the contract (see FAR clause 52.219-9).

3.3 THE FEDERAL ACQUISITION REGULATION SYSTEM

The Federal Acquisition Regulation System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The system consists of the:

- Federal Acquisition Regulation (FAR).
- Agency acquisition regulations that implement or supplement the FAR.

The FAR System does not include internal agency guidance that an agency head is authorized to issue. This type of guidance generally includes:

- Delegations of authority.
- Assignments of responsibility.
- Work-flow procedures.
- Internal reporting requirements.

Be aware that internal agency guidance must not conflict with the FAR.

3.3.1 Sources of the FAR

The FAR was created to provide a single, uniform acquisition regulation to all executive agencies. It became effective on April 1, 1984. Basically, the FAR was the result of a merger of the two major procurement regulations: the Defense Acquisition Regulation and the Federal Procurement Regulation, see Exhibit 3-8.

In addition, the FAR incorporated some of the material contained in NASA procurement regulations and the procurement regulations of other executive agencies.

The material in the FAR, therefore, is based on:

- Statutes.
- Executive Orders (EOs).
- OMB Circulars.
- OFPP Policy Letters.
- Previously existing regulations (especially the DAR and FPR).
- Decisions by the Comptroller General (head of the General Accounting Office), decisions by Boards of Contract Appeals (BCA), the Courts, and case and common law.

THE TWO MAJOR PROCUREMENT REGULATIONS SUPERSEDED BY THE FAR	
The Defense Acquisition Regulation (DAR)	<ul style="list-style-type: none"> • Issued by the Department of Defense (DoD) under 10 U.S.C (U.S. Code, Title 10). • Applicable to all components of the DoD. • Served as the basis for the present Department of Defense FAR Supplement.
The Federal Procurement Regulation (FPR)	<ul style="list-style-type: none"> • Issued by the General Services Administration (GSA) under 41 U.S.C (U.S. Code, Title 41). • Applicable to all civilian agencies of the executive departments. • Superseded by the FAR in its entirety.

Exhibit 3-8. The Two Major Procurement Regulations Superseded By the FAR.

3.3.2 FAR Maintenance

The FAR is maintained by two separate groups or councils under the overall leadership of the Federal Acquisition Regulatory Council, see Exhibit 3-9.

THE TWO COUNCILS RESPONSIBLE FOR MAINTAINING THE FAR	
The Defense Acquisition Regulatory Council (DARC)	The DARC is chaired by a representative of the DoD and has members representing the Army, Navy, Air Force, Defense Logistics Agency, and NASA.
The Civilian Agency Acquisition Council (CAAC)	The CAAC is chaired by a representative of the GSA and has representatives from 12 civilian agencies, as indicated in FAR 1.201.

Exhibit 3-9. The Two Councils Responsible for Maintaining the FAR.

The two councils listed in Exhibit 3-9 are responsible for maintaining the FAR. Each council is assigned primary responsibility for prescribed parts and subparts of the FAR. When one council develops a proposed amendment to the FAR, the amendment is referred to the other council for review and concurrence.

The FAR Secretariat, which was established within GSA, provides administrative support. The Secretariat prints, publishes, and distributes the FAR. The Secretariat also provides the two councils with centralized services for:

- Issuing Federal Register notices of proposed and final FAR rules.
- Preparing and issuing Federal Acquisition Circulars, which contain replacements for amended FAR pages.
- Maintaining a synopsis of current FAR revisions and their status.
- Assigning FAR case numbers.
- Maintaining official files.
- Providing miscellaneous administrative support.

FAR cases are numbered consecutively, with the appropriate calendar year (CY) as a prefix. For example: The first case initiated in CY 1990 is Case 90-01.

When a FAR case has been completed and a proposed change approved for publication, the change is issued as a Federal Acquisition Circular

(FAC). Note that there is not a one-to-one correlation between FAR cases and FACs. Some FAR cases are never incorporated in FACs. Several cases may be combined in a single FAC.

FACs are numbered consecutively as issued and are keyed to the fiscal year edition of the FAR. When the original (1984) edition of the FAR was in use, the FACs were numbered 84-XX (e.g., FAC 84-49). The FACs issued under the second (1990) edition of the FAR likewise are numbered 90-XX (e.g., FAC 90-1).

Prior to issuance, the FACs are reviewed by the Administrator of the Office of Federal Procurement Policy and are jointly “signed” by the Secretary of Defense and the Administrators of GSA and NASA or their delegates.

FACs are distributed for insertion into the loose-leaf edition of the FAR. In addition, a bound version of the FAR, which is published in the Code of Federal Regulations format at least once each calendar year, incorporates all circulars to that time.

3.3.3 FAR Supplements

The FAR is the basic regulation. It is essentially a statement of policy, but also includes some procedural detail. The FAR permits agencies to issue supplementing regulations because agencies are organized differently and may have unique acquisition needs. But an agency’s supplemental regulations should not:

- Unnecessarily repeat, paraphrase, or otherwise restate FAR material.
- Conflict with or be inconsistent with the FAR (except as required by law or when a deviation is authorized).

Agency acquisition regulations shall be limited to:

- Those necessary to implement FAR policies and procedures within the agency.
- Additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy the specific needs of the agency.

3.3.4 Using the FAR System

When making procurement decisions, you must heed all of the following:

- The FAR.
- Your agency's supplement to the FAR.
- Internal guidance.

Using the FAR

The FAR System is in Title 48, Code of Federal Regulations (CFR). The FAR is assigned Chapter 1. Chapter 1 is divided into subchapters and parts as shown in Exhibit 3-8, and is printed in two volumes.

The subchapters shown in Exhibit 3-10 provide organization to the FAR. For practical use, you should be aware that each FAR part is divided as illustrated in Exhibit 3-11.

By using the Table of Contents in Chapter 1 of the FAR, you can locate the subject you are interested in. For example, suppose you are interested in knowing the FAR requirements for competition. The Chapter 1 Table of Contents shows that Part 6 is titled "Competition Requirements." When you locate Part 6, you will find a table of contents for that Part. There you will find that Part 6 is divided into five subparts, which are divided into sections and subsections.

With practice, you will find that locating specific subject matter is relatively easy. You may also use the index in the FAR to help you locate subject matter; however, the internal relationships that exist between the various parts necessitate the frequent use of cross-references. The arrangement of FAR material is described in detail in Subsection 1.104-2 (i.e., Part 1, Subpart 1, Section 4, Subsection 2).

FAR ORGANIZATION	
Parts 1 - 4	Subchapter A — General
Parts 5 - 12	Subchapter B — Competition and Acquisition Planning
Parts 13 - 18	Subchapter C — Contracting Methods and Contract Types
Parts 19 - 26	Subchapter D — Socioeconomic Programs
Parts 27 - 33	Subchapter E — General Contracting Requirements
Parts 34 - 41	Subchapter F — Special Categories of Contracting
Parts 42 - 51	Subchapter G — Contract Management
Parts 52 - 53	Subchapter H — Clauses and Forms
Parts 54 - 99	Reserved

Exhibit 3-10. FAR Organization.

EXAMPLE OF HOW THE FAR IS DIVIDED		
<u>FAR DIVISIONS</u>	<u>FAR #</u>	<u>EXAMPLE</u>
Parts	<u>14</u>	Sealed Bidding
Subparts	14. <u>1</u>	Use of Sealed Bidding
Sections	14.1 <u>03</u>	Policy
Subsections	14.103- <u>1</u>	General

Exhibit 3-11. Example of How FAR is Divided.

CHAPTER 3

Using Agency Regulations

Chapters 2 through 59 of Title 48 of the CFR are reserved for the acquisition regulations of the executive agencies. Some examples are:

- DoD — Chapter 2.
- HHS — Chapter 3.
- GSA — Chapter 5.
- NASA — Chapter 18.

Using the GSA as an example, GSAR (General Services Administration Acquisition Regulation) supplements to the FAR are preceded by a 5. For example, FAR 6.304(a)(1) requires approval at a level above the CO. It is up to GSA to identify that level. In the GSAR, the coverage is at 506.304.

If an agency needs to supplement the FAR, and there is no counterpart in the FAR, the agency will identify such material by the numbers “70” and up. For example, if the GSAR added something unique to FAR Subpart 6.3, it would be numbered in the GSAR as 506.370 (the second addition at the location would be 506.371). A whole subpart added to FAR Part 6 would be numbered 506.70.

CHAPTER 4

ACQUISITION ROLES AND RESPONSIBILITIES WITHIN AN AGENCY (THE PLAYERS)

An Agency's Organization

Jane Doggett, a contract specialist, has just transferred to the Department of Transportation (DOT) from another Federal agency. Jane made the job change because she was promised that, after a reasonable break-in period, she would receive a contracting officer appointment and a promotion in grade.

After the usual processing through the Office of Personnel, Jane was assigned to the Federal Railroad Administration (FRA), Office of Procurement Services. Jane knew that the Coast Guard and the Federal Aviation Administration were part of DOT, but she had never heard of the FRA, nor did she know where it fit into the agency.

Wanting to impress her superiors, Jane determined that she needed to review the lines of procurement authority within DOT and the sources of policy and procedural direction. She wondered where she might find the necessary information.

Learning Objectives

- 4-1 Describe various approaches to organizing the acquisition function within a department or agency.
- 4-2 Define the “Law of Agency”.
- 4-3 Identify and define the roles and responsibilities of:
 - Contracting officers (COs).
 - Other contracting personnel.
 - Program/requirements managers.
 - Contracting officer representatives and technical representatives.
 - Quality assurance personnel.
 - Logistics transportation, and supply managers.
 - Property managers.
 - Auditors and accountants.
 - Legal counsel.
 - Small business advocates.
 - Competition and breakout advocates.
 - Other interested parties.

Exhibit 4-1. Learning Objectives.

CHAPTER INTRODUCTION

Every executive agency has a specific mission. The agency head establishes broad policies, organizes the agency to meet mission objectives, and delegates authority for those objectives. Acquisition roles and responsibilities within an agency are a function of the agency’s mission, policies, organization, and delegations of authority.

4.1 TYPICAL ORGANIZATION WITHIN AGENCIES

Agencies are organized to maximize the use of resources in fulfilling their missions to ensure management control consistent with the delegation of responsibilities and authorities, and, to some degree, to reflect the management prerogatives of agency heads and their principal assistants.

There are differences in organization among the executive agencies. For example, part of the mission of the Department of Labor (DOL) is to ensure that various labor laws are implemented and enforced. Acquisition is important to DOL, but it is not a predominant function. Accordingly, Labor's procurement executive is a director for both "administrative" and "procurement" programs and reports to an Assistant Secretary for Administration and Management.

On the other hand, a major part of the mission of GSA is to make certain items of supplies and services available to all executive agencies. Because this responsibility requires a large, well-managed acquisition organization, the procurement executive is GSA's Associate Administrator for Acquisition Policy and reports directly to the agency head (or deputy).

The U.S. Department of Transportation (DOT) is an example of an agency with multiple missions. DOT is organized as shown in the following exhibits.

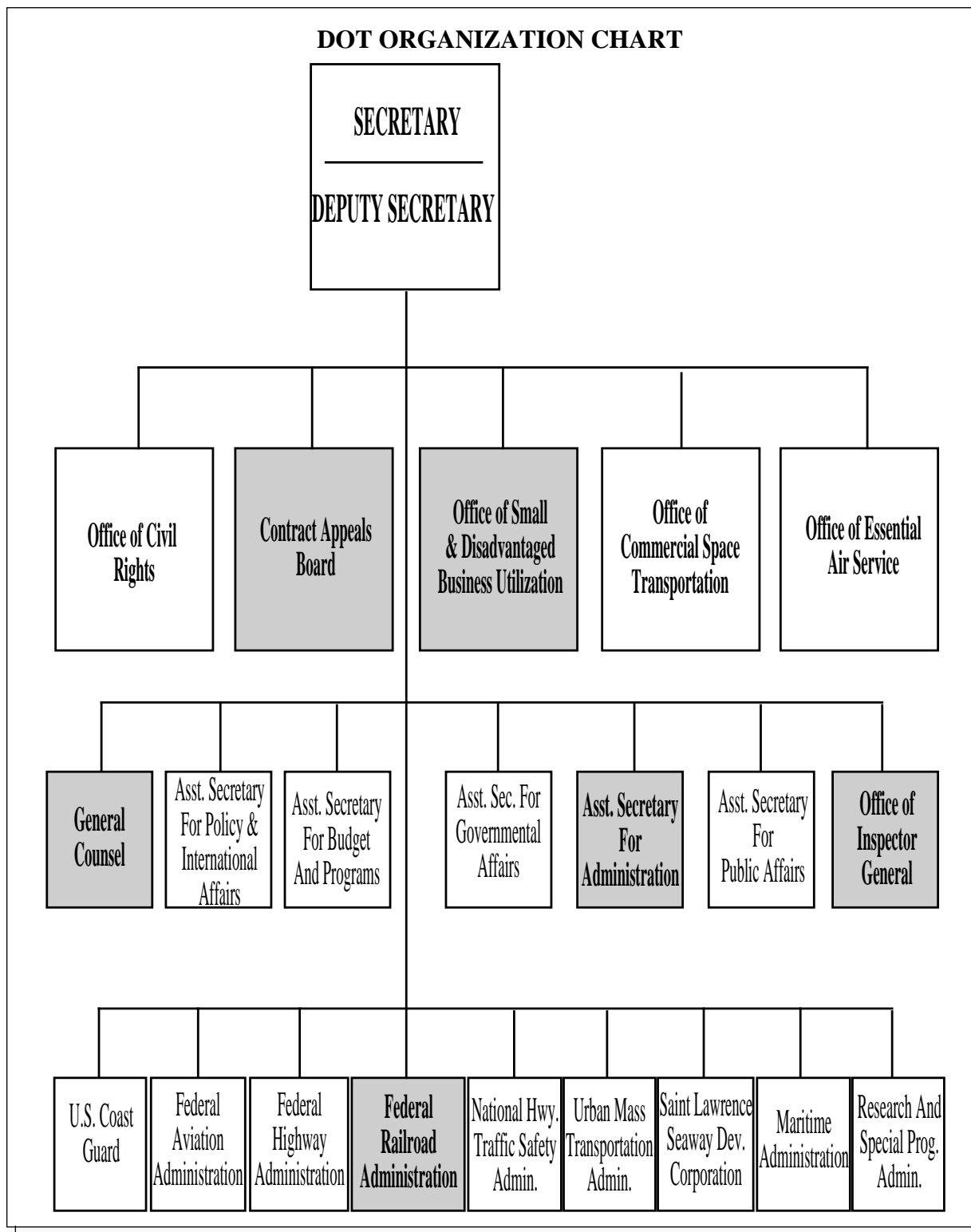
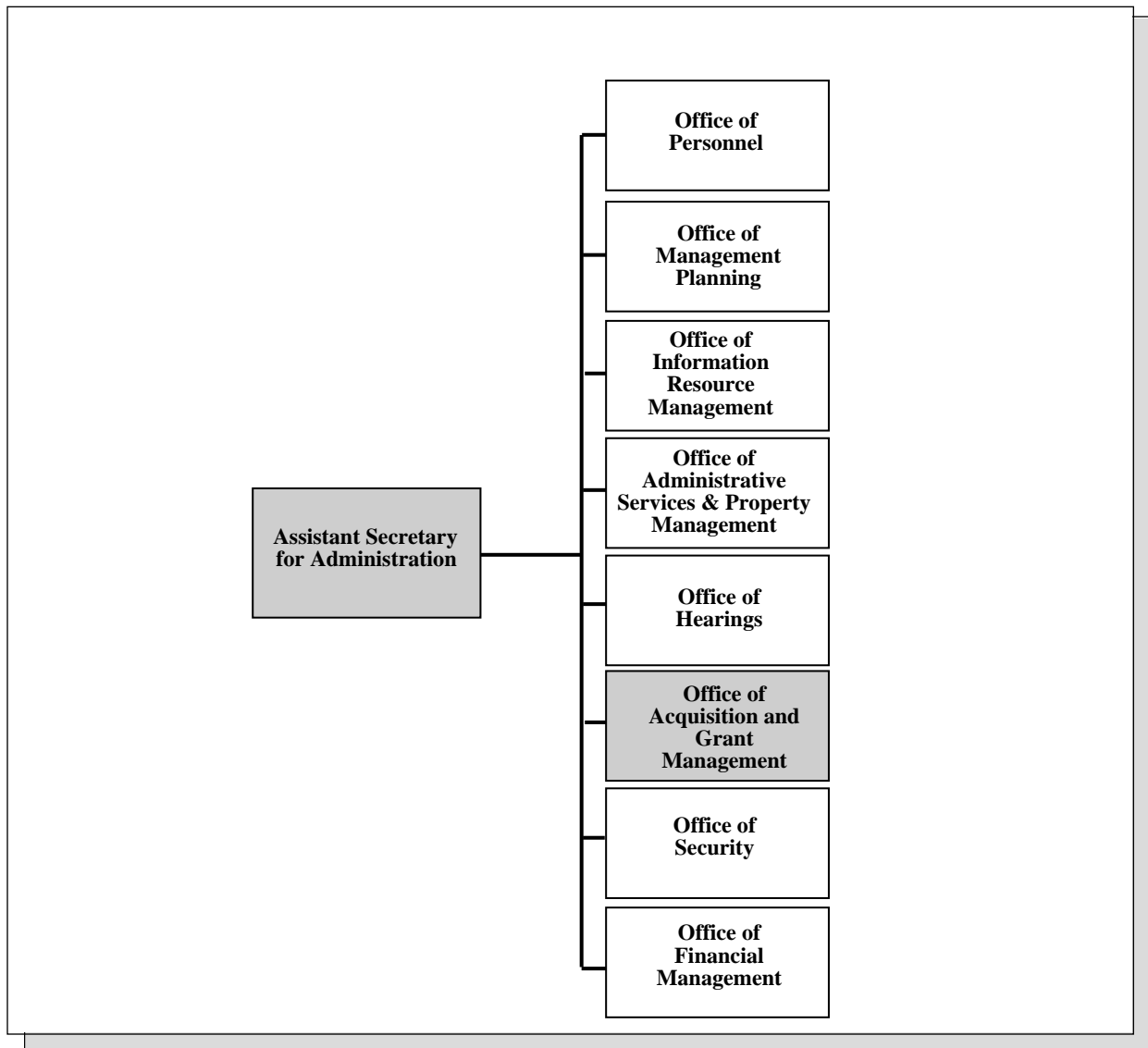


Exhibit 4-2. DOT Organization Chart.

Note that DOT's mission is embodied in nine mission-oriented organizations, the U.S. Coast Guard, seven administrations, and a corporation.

ACQUISITION ROLES AND RESPONSIBILITIES
WITHIN AN AGENCY (THE PLAYERS)



CHAPTER 4

Under the Secretary's office there is an Assistant Secretary for Administration (ASA). The ASA reports to the Secretary on a broad range of responsibilities. Because of the major importance of acquisitions and grants within DOT, the ASA has established an Office of Acquisition and Grant Management (OAGM). The OAGM is responsible for implementing and supplementing the FAR and has done so by issuing and maintaining the Transportation Acquisition Regulation (TAR). A member of the OAGM staff is also a member of the Civilian Agency Acquisition Council (CAAC) that is part of the FAR maintenance organization. The OAGM also has policy, management, and reporting authority and responsibilities that cross all nine of the mission-oriented organizations.

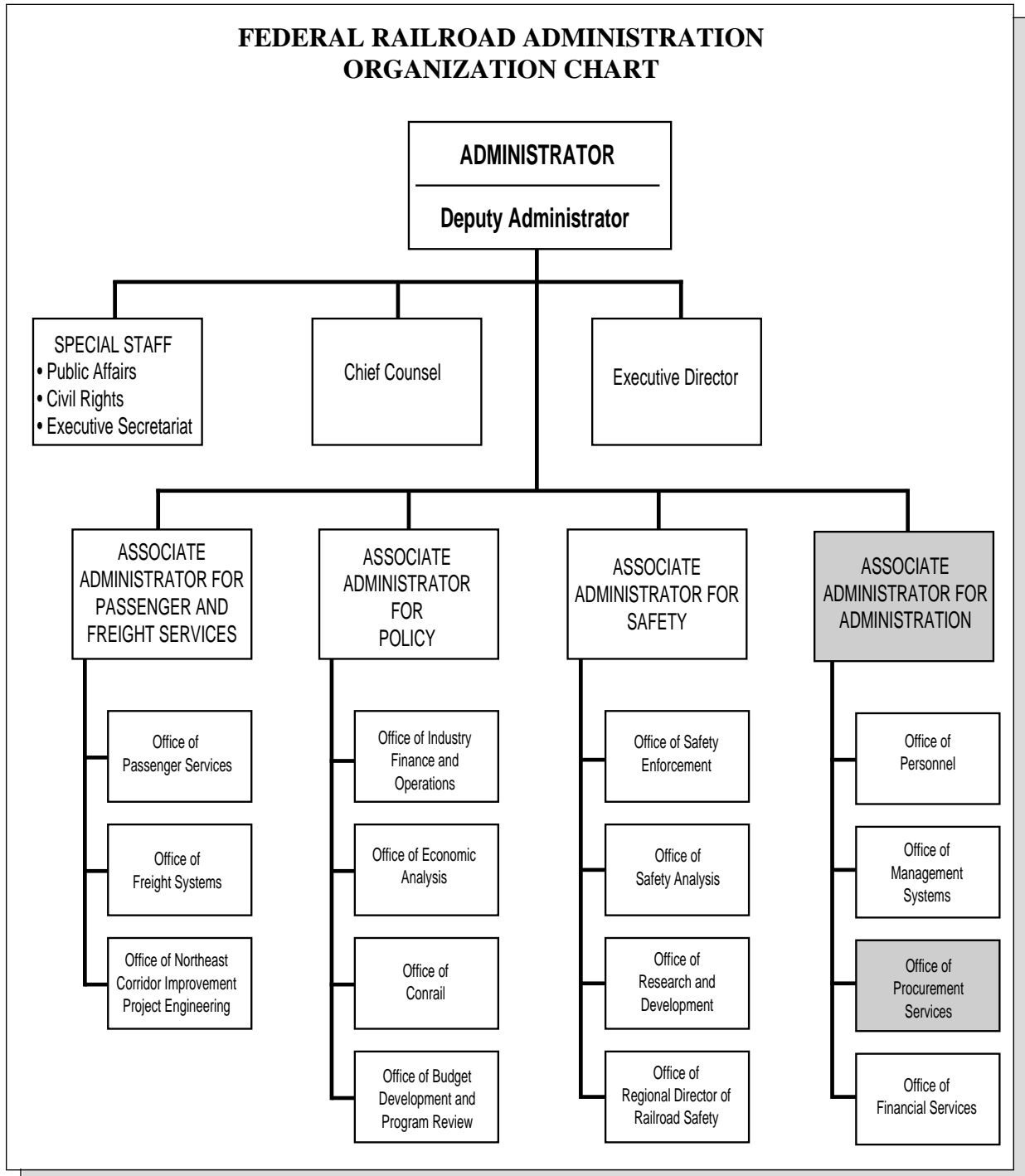


Exhibit 4-4. Federal Railroad Administration Organization Chart.

This organization is one of the nine mission-oriented organizations. Note that the organization structure mirrors that of the Office of the Secretary in that acquisition (i.e., “Office of Procurement Services”) is the responsibility of the Associate Administrator for Administration.

Within the Federal Railroad Administration, acquisition operations are performed within the Office of Procurement Services. The head of that office reports to the Associate Administrator for Administration who reports to the Administrator. It enters into contracts on behalf of the requiring activities within the Federal Railroad Administration (e.g., the Office of Research and Development, the Office of Northeast Corridor Improvement Project Engineering, etc.). However, the broad acquisition policies, reporting requirements, and regulatory controls flow from the Office of Acquisition and Grant Management.

The DOT organization (Exhibit 4-4) is complex and may not closely correspond with your agency's organization. What is important is to be able to identify the people and the organizations that play important roles in the process.

Thinking back to the vignette at the beginning of this chapter, Jane realized that one source of information on the procurement line of authority is the agency organization chart. While a "wiring" diagram doesn't contain all of the information needed, it can lead you to additional information. Jane found that the DOT organization is different from that of her former agency but that the delegations of authority and responsibility followed similar patterns (e.g., broad agency policy at the top and procedural details at lower levels.)

4.1.1 Top Agency Officials

Agency Head and Staff

The agency head establishes overall agency policy, appoints persons to fill key positions, and has "unlimited" acquisition authority. The agency head sometimes makes key acquisition decisions, such as in source selection. Agency heads must ensure that planning, programming, and budgeting systems are established and maintained so as to ensure the efficiency and effectiveness of the acquisition function. The agency senior acquisition executive (see below) and other staff and department heads are normally delegated specific authorities to act for the agency head.

Also, in many instances, legal counsel is part of the agency head's immediate staff. Legal counsel may participate in formulating agency acquisition policy, review contract actions for legal sufficiency, and advise acquisition officials on protests, disputes, and other complex issues.

Comptroller, Finance, and Accounting

Financial management is under the office of the comptroller (or similarly titled official). The comptroller participates in budget development and prepares the agency's budget submission to OMB. Once money becomes available to the agency, the comptroller controls the commitment,

ACQUISITION ROLES AND RESPONSIBILITIES
WITHIN AN AGENCY (THE PLAYERS)

obligation, and disbursement of funds. Every contract (and most contract modifications) involves the obligation (or de-obligation) of funds. The cognizant financial officer in the comptroller's office certifies that the required amount and type of money is available for each contract action. In some agencies, the comptroller also provides pricing, audit, and other financial support services to assist the CO.

Senior Procurement
Executive

Often, the highest level of acquisition authority within an agency is the agency procurement executive (PE). Generally, the procurement executive establishes major acquisition policies and ensures compliance with them. "Procurement Executive" is a functional title. The individual with this responsibility may be an Assistant Secretary, Assistant Administrator, or other high-level official.

4.1.2 Types of Organizations

Functional (Mission)
Divisions

Functional divisions of an agency are established to support agency missions and may mirror the "headquarters" organization. For example, functional divisions of the Department of the Navy include the Air Systems Command (NAVAIR) and the Sea Systems Command (NAVSEA). Within those commands there are legal staff comptrollers, acquisition personnel, and mission-oriented organizations such as program offices, logistics, quality assurance, etc. Another example includes the functional (mission) divisions within GSA. They include:

- Public Buildings Service (PBS). The PBS has broad responsibilities for acquiring through purchase or lease, buildings and other real estate for use Governmentwide. PBS also has some responsibility for maintenance of public buildings.
- Federal Supply Service (FSS). The FSS is responsible, on a Governmentwide basis, for acquiring and maintaining stocks of certain supplies; for acquiring office furniture and fixtures, and certain power and hand tools; for purchasing or leasing motor vehicles; and for establishing and maintaining "schedule" contracts (see Section 8.1.2, "Orders Against Contracts/Agreements").
- Office of Information Resources Management (OIRM). OIRM is responsible, on a Governmentwide basis, for the acquisition of automatic data processing equipment (ADPE) and related services. OIRM may make the purchase or authorize the requiring agency to do so. OIRM also establishes schedule contracts for some ADPE and related services. A major responsibility of OIRM is to provide Governmentwide telecommunications systems and services.

Each of the above GSA organizations is a contracting activity (as is the head of NAVAIR and NAVSEA). The head of a contracting activity (HCA) is generally the next level of acquisition authority below the acquisition executive and has overall responsibility for managing the contracting activity.

Within a contracting activity, the HCA may delegate authority to divisions, branches, sections, etc., along organizational lines. The appointment of COs and their dollar level of authority is generally managed within the contracting activity by the HCA or a staff office under the HCA.

Field Activities

Some agencies or functional divisions may retain contractual authority at the headquarters level and perform all acquisition activities essentially within the “headquarters.” Other agencies (GSA, EPA, Defense agencies), or functional divisions within agencies, that have nationwide or worldwide responsibilities, delegate contractual authority, in varying degrees, to the field activities.

4.2 KEY ACQUISITION PERSONNEL

4.2.1 The Law Of Agency

Recall the question posed by the Supreme Court as quoted in Chapter 3 (Section 3.1.1) relative to the **validity** of a Government contract: “Is the act performed by someone having the authority to act?” In Government contracting it is also necessary to consider the “law of agency.”

Under the law of agency, one party, known as the principal, appoints another party, known as an agent, to enter into a business or contractual relationship with a third party. In Governmental contracting the:

- Government is the principal.
- Contracting officer (CO) is the agent.
- Third party is the contractor.

What this all means is that, for a Government contract (including modifications and changes) to be valid, it must be entered into by a duly appointed CO acting within the scope of his or her authority (to act). You will see later that the CO may delegate authority for some decisions to others.

4.2.2 Roles and Responsibilities

Contracting Officers

FAR 1.6

The CO is the key operational person in the Federal acquisition process. The fundamental authority and responsibilities of a CO as summarized from FAR 1.602 are shown on Exhibit 4-5. The decision making authority of COs, as well as the limits on that authority, are also established in case law (e.g., decisions by the courts, Comptroller General, and Boards of Contract Appeals), agency supplemental regulations, and specific delegations of authority by the head of the agency.

As noted in Exhibit 4-5, a CO may have the authority to enter into, administer or terminate contracts. Sometimes, because of the volume and scope of an agency's contracting mission, a CO may be appointed to perform all or any one of the three functions. Therefore a CO may be appointed as:

- **PCO** — Procuring Contracting Officer. Manages the planning, solicitation and award of a contract; signs it.
- **ACO** — Administrative Contracting Officer. Administers a contract signed by the PCO (if assigned to do so).
- **TCO** — Termination Contracting Officer. Manages termination actions, disposal of property, etc., following a termination action by a PCO.

A “short” list of “approve or disapprove” tasks that may be performed by a CO (if so authorized) is shown on Exhibit 4-6. A comprehensive listing could include 150 or more tasks that may be the responsibility of the CO.

Other Contracting Personnel

Because the CO has many functions to perform, he or she is usually supported by a staff of contracting personnel (GS-1102) and procurement assistants (GS-1106). Titles for contracting positions include:

- **Contract Specialist.** Has special knowledge of preaward and postaward procedures. May plan or conduct the contracting process, from reviewing the purchase request through delivery and contract closeout. A contract specialist may be assigned to perform specialties within the process (see below).
- **Contract Negotiator.** Has special knowledge and ability to enter into contract negotiations and reach agreements with a prospective contractor.
- **Contract Administrator.** Has special knowledge of postaward contracting procedures to ensure compliance with the terms and conditions of contracts.

- **Contract Price/Cost Analyst.** Has special knowledge of cost and price analysis techniques and analyzes proposals, contract changes, repricing agreements; supports price negotiations.
- **Contract Termination Specialist.** Has a knowledge of post-award procedures and negotiation techniques necessary to represent the Government (perhaps as a TCO) in the settlement of termination claims.
- **Procurement Analyst.** Has a broad knowledge of acquisition policies and procedures necessary to plan, analyze, or evaluate acquisition programs; reviews proposed contract actions; develops regulatory material; assists subordinate activities.

Program and Re-
quirements Managers

Senior level managers identify the need for supplies or services to support their programs, determine strategies for meeting the need (including in-house performance vs. contracting), and, when the decision is to contract, prepare and submit purchase requests to the CO.

After acceptance of the purchase request, the managers and/or their staffs often perform such functions as reviewing technical and business management proposals from offerors, participating in fact finding and negotiations, and ranking proposals against technical and management evaluation factors. After contract award, they may perform such contract administration management duties as inspection and acceptance of deliverables, as representatives of the CO (see below).

Contracting Officer
Representatives and
Technical Represen-
tatives

The CO may choose to delegate limited authority for certain contract-related decisions to designated individuals. Such individuals are often known as:

- CORs — Contracting Officer's Representatives.
- COTRs — Contracting Officer's Technical Representatives (the COTR works for or represents the requiring activity and manages the performance of the contractor from a technical perspective).

COs appoint CORs and COTRs and specify their authority in writing. The appointed personnel may perform only those functions delegated to them, and neither acquisition nor non-acquisition personnel may sign contracts or modify contracts or take any other action that has been reserved to the CO.

ACQUISITION ROLES AND RESPONSIBILITIES
WITHIN AN AGENCY (THE PLAYERS)

Typical post-award duties (especially for a COTR) include:

- Monitoring technical performance by reviewing progress reports, making plant visits, etc.
- Inspecting deliverables and preparing receiving reports.
- Comparing progress with delivery schedules and cost objectives.
- Advising the CO of suspected problems with contract performance.
- Providing technical assistance to the CO regarding changes and modifications.

Quality Assurance
Personnel

As COTRs, quality assurance personnel specialize in the tasks of inspecting and accepting (or recommending rejection of) items delivered under Government contracts. They may also be responsible for reviewing the acceptability of a contractor's quality assurance procedures and programs.

Transportation
Managers, Logistics
and Supply Managers

Transportation managers ensure compliance with transportation rules and regulations and determine the best shipping methods. Logistics and supply managers perform such functions as forecasting needs, identifying economic ordering quantities, initiating purchase requests, and managing inventories.

Property Managers

Property managers may be appointed as CORs for such functions as arranging for the furnishing of Government property to a contractor, monitoring the contractor's compliance with the property clauses of the contract, assessing any damage to Government property, and recommending the method or methods for disposing of property.

Auditors and
Accountants

Auditors and accountants audit contractor accounting and estimating systems, cost and pricing data, invoices, and the like. They also assist the CO with such functions as establishing positions on proposed elements of cost, evaluating offerors' financial responsibility, and establishing indirect cost rates for billing purposes.

Legal Counsel

Lawyers typically review proposed solicitations, awards, and contracts for legal sufficiency, assist COs in responding to protests and disputes, and advise COs on the interpretation and applicability of laws, regulations, case law, and contract clauses.

Small Business
Advocates

Working independently or with the CO, these advocates perform such functions as planning set-asides, identifying "break-out opportunities," reviewing subcontracting plans, and otherwise supporting attainment of small business goals.

CHAPTER 4

Competition Advocates

Competition advocates review acquisition plans and analyze specifications to identify and discourage “barriers” to full and open competition. They also review justifications for other than full and open competition.

Other Interested Parties

Numerous other specialists or program-related persons may become involved with a particular acquisition or program; e.g., performance measurement specialists, value engineering program specialists, streamlining advocates (eliminating unnecessary specifications).

CONTRACTING OFFICERS' AUTHORITY AND RESPONSIBILITIES

Authority:

- Contracting officers may enter into, administer, or terminate contracts and make related determinations and findings.
- Contracting officers may bind the Government only to the extent of the authority delegated to them.
- Contracting officers shall receive from the appointing authority clear instructions in writing regarding the limits of their authority.
- Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.
- No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, and all other applicable procedures, including clearance and approvals, have been met.

Responsibilities:

- Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.
- In order to perform these responsibilities, contracting officers should be allowed wide latitude to exercise business judgement. Contracting officers shall:
 - Ensure that the requirements of pertinent laws, regulations., etc., have been met.
 - Ensure that sufficient funds are available for obligation.
 - Ensure that contractors receive impartial, fair, and equitable treatment.
 - Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

Exhibit 4-5. Contracting Officers' Authority and Responsibilities.

SOME “APPROVE OR DISAPPROVE” CO TASKS

A CO may be required to approve, disapprove, and/or execute:

- Advance procurement plans.
- Small business set-asides.
- Solicitations.
- Cost and profit negotiation objectives.
- Negotiation memoranda.
- Small business subcontracting plans.
- Contracts.
- The allowability of costs.
- Contractor property control, purchasing, or quality assurance procedures.
- Contractor’s requests for assignment of claims, leasing, travel, or placement of subcontracts.
- Individual sureties.
- Cure notices.

Exhibit 4-6. Some “Approve or Disapprove” CO Tasks.

4.3 THE ACQUISITION FUNCTION IN OPERATION

Using the foregoing outline of organizations and personnel as the basis, a typical acquisition action may involve the following six steps in sequence:

1. A program or requirements manager identifies a need for supplies or services that can best be met through the acquisition process. The manager drafts a specification or statement of work, assisted in the effort by technical, quality, and other personnel. This and other material is “packaged” as a Purchase Request (PR).
2. The PR must be approved at the organizational levels prescribed in agency regulations.
3. The approved PR generally goes to the Comptroller (i.e., Finance Office) for a commitment of funds—for the amount of money that the program or requirements manager estimates will be needed for a contract. The PR is forwarded to the CO.

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4. The CO reviews the PR. If it is acceptable, the CO, with assistance from the program or requirements manager:
 - Researches the market, plans the solicitation and evaluation of offers, and solicits offers.
 - Receives and evaluates offers.
 - Selects the source and awards the contract.
5. The contracting officer administers the contract or assigns it, in whole or in part, for administration.
6. The program or requirements manager and any designated COTRs (assisted by field organizations, if necessary) administer assigned terms and conditions of the contract, to the extent authorized by the CO.

The above process will continue until the work is completed and the contract closed.

CHAPTER 5

INTRODUCTION TO THE ACQUISITION PROCESS

The Livingston's House Dilemma

Mr. and Mrs. Livingston decide to build a house on a lot they own near a lake. They want to use it as a vacation house for the next few years, and then make it their permanent retirement home.

They decide to start their project immediately to take advantage of current low interest rates and to have the house ready for use next spring — about 9 months from now.

Having made the decision to proceed, they realize that they must make decisions about the house itself:

- *Should they design it themselves?*
- *Should they just give a good builder a sketch and ask the builder to “fill it in” while doing the actual building?*
- *Would it be better to hire an architect to create a complete design and then get a good builder to build it according to the design?*

Mr. and Mrs. Livingston decide to use an architect. They engage Ms. Allen, an architect of good reputation whose office is near the building site. Ms. Allen develops a set of plans and specifications that they like.

They are not sure who should build the house. After discussions with Ms. Allen, they decide to invite builders from the area to submit bids. Four builders submit bids. Based on their discussion with the architect, the Livingstons believe the house will cost about \$130,000. The bids they receive are:

<i>Bidder A</i>	<i>\$160,000</i>
<i>Bidder B</i>	<i>134,000</i>
<i>Bidder C</i>	<i>116,000</i>
<i>Bidder D</i>	<i>105,000</i>

CHAPTER 5

The Livingstons are excited about the bid from Bidder D. But Bidder D does not intend to start right away, and probably would not have the house ready until next fall—if then. Also, Bidder D's timing might have a serious impact on financing.

Next they consider Bidder C. They learn that until recently he was a carpenter in the area. Word of mouth has it that he never was able to hold a job for more than a few months because of his lack of skill and poor work habits. The Livingstons decide that it would be too risky to give him the job.

Then they consider Bidder B. Mr. Butler has a good reputation, does good work, finishes jobs on schedule, and has solid recommendations from several families for whom he had built similar homes.

After a meeting with Ms. Allen and Mr. Butler, the Livingstons sign a contract with Mr. Butler. Because of the distance from their present home to the building site, they realize they will not be able to see that the work is being done properly. They engage Ms. Allen to make periodic inspections of the work and to certify progress so that Mr. Butler can get progress payments from the bank. It is clearly understood, however, that any change or any faulty work has to be reported to the Livingstons so that they can decide what action to take.

Learning Objectives

- 5-1 State the three phases of the acquisition process and related business issues.
- 5-2 State the four main functions of the presolicitation phase.
- 5-3 State the three main functions of the solicitation-award phase.
- 5-4 State the seven main functions of the post-award administration phase.
- 5-5 Describe the relationship between acquisition goals and functions.

Exhibit 5-1. Learning Objectives.

5.1 ACQUISITION PHASES AND RELATED BUSINESS ISSUES

Perhaps you have had an experience similar to the Livingstons'. You may have faced the same issues and, given those issues, may have had to make the same basic business decisions:

5.1.1 The Presolicitation Phase

The purpose of this phase is to (1) decide whether to contract for the requirement and, if that is the decision, (2) lay the groundwork for soliciting and awarding the contract. Related issues:

1. What do we need, and is contracting the best alternative for satisfying that need?
2. How do we initiate an acquisition, in terms of such things as approvals, funding, and information on the market?
3. How can we best specify exactly what we want?
4. Who should we consider for the work, what factors should apply in making our selection, and what method (i.e. sealed bidding or negotiations) should be used to award the contract ?

5.1.2 The Solicitation And Award Phase

The purpose of this phase is to (1) solicit offers, (2) evaluate offers, and award the contract. Related issues:

1. How do we solicit offers from the contractors in whom we are interested and under what terms and conditions?
2. How do we evaluate the submitted offers and identify that offer which represents the best value?
3. How do we award the contract and handle any complaints from offerors who were not selected?

5.1.3 The Post-Award Phase

The purpose of this phase is to administer the awarded contract. Related issues:

1. What is required to initiate work under the contract?
2. How can we be sure the work is done according to the contract, and what steps can we take if things go wrong?
3. When and how do we pay the contractor?
4. How do we close the contract out?
5. What happens if we decide to change the design of the item ?
6. What if we need to terminate the contract, either because we no longer want the deliverable or because the contractor is not performing as required by the contract?
7. What if the contractor alleges that we have not lived up to our end of the contract?

Each of these issues represents an acquisition function, whether the acquiring is being done by the Livingstons, corporations, State or local Governments, or the Federal Government. For each of these issues, you will find a corresponding function in Exhibit 5-2 under the matching phase and number.

5.2 FUNCTIONS OF THE FEDERAL ACQUISITION PROCESS

FUNCTIONS OF THE ACQUISITION PROCESS

Functions of the Presolicitation Phase

1. Determination of Need.
2. Initiating the Procurement.
3. Analysis of Requirement.
4. Sourcing.

Functions of the Solicitation-Award Phase

1. Solicitation.
2. Evaluation (Sealed Bid and Negotiation).
3. Award.

Functions of the Post-Award Administration Phase

1. Start-up.
2. Quality Assurance.
3. Payment and Accounting.
4. Closeout.
5. Contract Modification.
6. Termination.
7. Claims.

Exhibit 5-2. Functions of the Acquisition Process.

What is Unique About the Federal Acquisition Process?

While it involves the same basic phases and functions as any acquisition process, the Federal acquisition process differs greatly in the details of how those functions are performed. In the first four chapters, you learned about:

- The goals of the Federal acquisition process (see Exhibit 5-3) and the environmental constraints on goal accomplishment.
- The role of the Congress, the President, and the Judiciary in acquiring supplies and services for the Government.
- The basic statutes and regulations that govern the acquisition process.
- The key players and participants in the Federal acquisition process and their respective roles and responsibilities.

These all weigh heavily in determining the steps in performing the functions of Exhibit 5-2 and how those steps are performed. The following chapters present each function and its related duties. You will learn that the Federal acquisition process, though prescribed and controlled to a large degree, still requires the exercise of judgement on the part of the players, particularly the CO. You will also learn how the process can, if properly and competently executed, help satisfy the goals in Exhibit 5-3.

GOALS OF THE FEDERAL ACQUISITION PROCESS

1. Obtain the optimum market response to requirements for supplies and services, in terms of:

- Quality.
- Timeliness.
- Price.

While:

- Accomplishing socioeconomic objectives.
- Minimizing business and technical risks.
- Maximizing competition.
- Maintaining integrity.

2. Assure that purchased supplies and services are:

- Delivered or performed when and where specified in the contract.
- Acceptable, in terms of conforming to the contract's specifications or statement of work.
- Furnished in compliance with other terms and conditions of the contract.

Exhibit 5-3. Goals of the Federal Acquisition Process.

Relationship Between
Goals and Functions

In the final analysis, your performance of acquisition functions and related duties should be judged not by:

- How faithfully you have observed the letter of the applicable laws and regulations (although your acquisitions must comply with those laws and regulations).
- The extent of competition for the requirement (although maximizing competition is a subgoal of the process).
- Whether you have obtained a lower price than in prior acquisitions for the supply or service (although price is an important factor .)

Rather, your performance at every step of the way in the acquisition process should, in the final analysis, be judged by its contribution to accomplishing the overall goals in Exhibit 5-3.

For example, you may perform every step of the procurement process in apparent compliance with the letter of the applicable laws and regulations. You may have succeeded in obtaining independently prepared offers from three competitors. Yet the prices might be unacceptably high because you:

- Entered the market at the wrong time (e.g., buying produce out of season).
- Used a specification that unnecessarily and unwittingly limited competition to a market segment characterized by premium prices.
- Ordered an uneconomic quantity.
- Imposed an unnecessarily tight delivery schedule relative to delivery terms and conditions that are prevalent in that market.
- Used the wrong type of contract (e.g., a firm fixed price contract for a market that is expecting a high rate of inflation during the period of contract performance).
- Imposed warranty requirements that are far in excess of what is customary for that market.

The bottom line: No function of the acquisition process or any related duty should be viewed as an end in itself. Rather, as you read about each function and duty in the following chapters, always be mindful of the overall goals in Exhibit 5-3.

Mapping the Federal
Acquisition Process

Exhibit 5-4 maps the phases and functions of the Federal acquisition process, in terms of the specific duties that are related to each function. In chapters 6 through 9, you will find a block of text for every duty in the exhibit.

THE ACQUISITION PROCESS

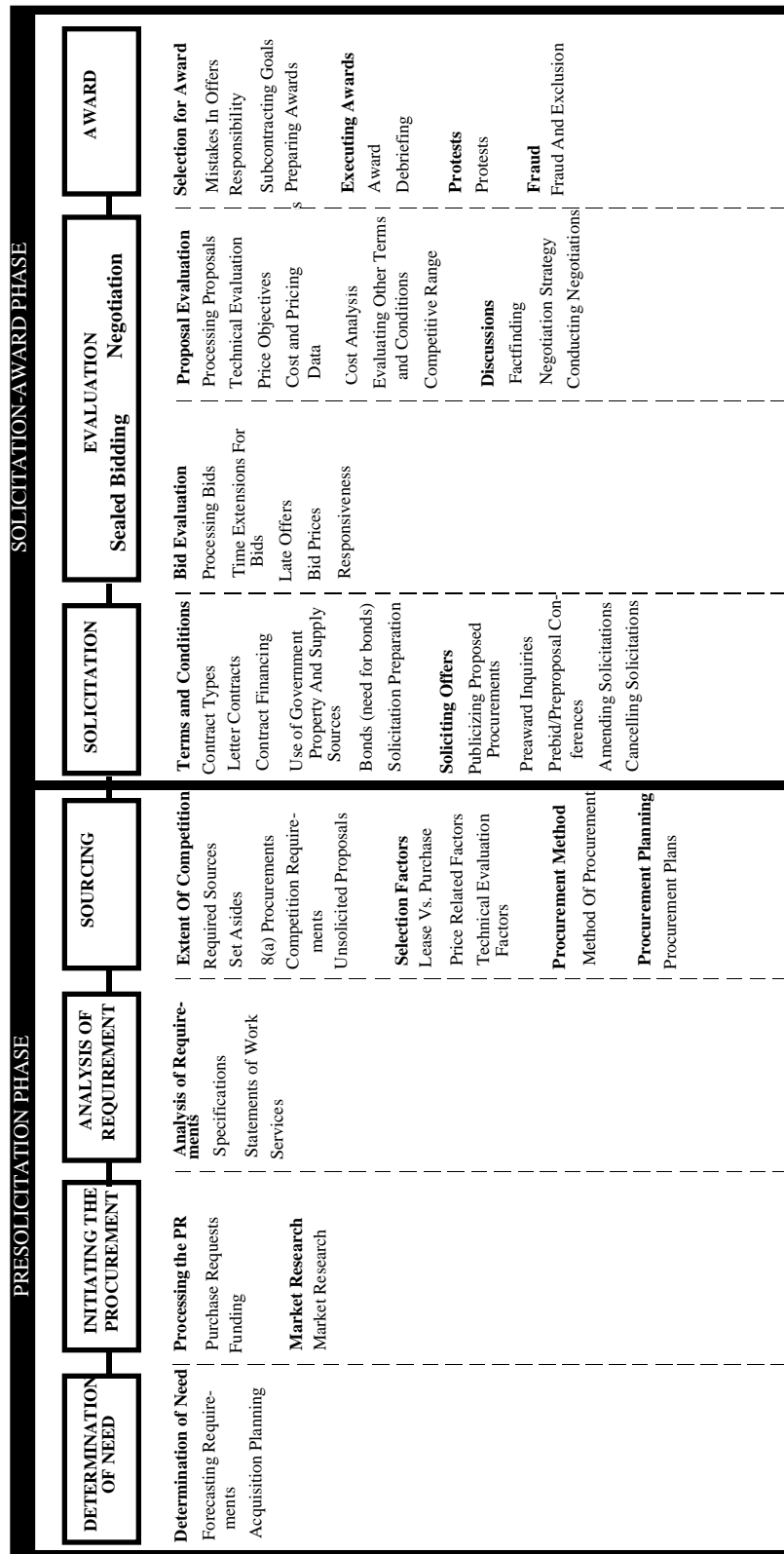


Exhibit 5-4. Federal Acquisition Process Chart.

THE ACQUISITION PROCESS

POST-AWARD ADMINISTRATION PHASE						SPECIALTIES			
START-UP	QUALITY ASSURANCE	PAYMENT AND ACCOUNTING	CLOSEOUT	CONTRACT MODIFICATION	TERMINATION	CLAIMS	SPECIALIZED AREAS		
Planning Contract Administration Planning Post-Award Orientations	Monitoring and Problem Solving Monitoring, Inspection and Acceptance Delays Stop Work Remedies	Payment Limitation Of Costs Invoices Unallowable Costs Assignment Of Claims Collecting Contractor Debts	Closeout Closeout	Modifications/Options Contract Modifications A. Contract Modifications B. Exercising Options	Termination Termination A. Determine whether to terminate for convenience or default B. Terminating for convenience C. Terminating for default	Claims Claims	ADP/Telecommunications Construction A&E Systems Procurement Simplified Purchasing Real Property Leasing		
Ordering Orders Against Contracts/Agreements	A. Selection B. Cure or slow cause notice C. Liquidated damages D. Rejection of work E. Express warranty or guarantee F. Implied warranty G. Latent defects	Progress Payments Price and Fee Adjustments			Bonds (administering bonds)				
Subcontracting Consent To Subcontracts		Accounting and Defective Pricing Accounting and Cost Estimating Systems Cost Accounting Standards Defective Pricing							
	Property Property Administration								
	Reporting Performance Problems Fraud And Exclusion								

Exhibit 5-4. Federal Acquisition Process Chart (continued)

CHAPTER 5

However, please note that not every function or duty applies to every acquisition. For example, many contracts are not modified, and few are terminated. Also be advised that the sequencing of functions or duties may vary from contract to contract. For example, some solicitations may be amended prior to the opening of proposals, as suggested by Exhibit 5-4, but others might not be amended until after the Government has begun to evaluate proposals.

Alternative Acquisition Procedures

FAR 15.613

Also note that several agencies, most notably the National Aeronautics and Space Administration, use alternative source selection procedures for large acquisitions. Such source selection procedures depart markedly from the process described in the next several chapters, in terms of (1) steps in the process, (2) how those steps are performed, and (3) in the roles and responsibilities of the CO and other officials for the acquisition.

Each of the following four chapters presents a different section of Exhibit 5-4 and fully details the duties in that section.



CHAPTER 6

PRESOLICITATION PHASE

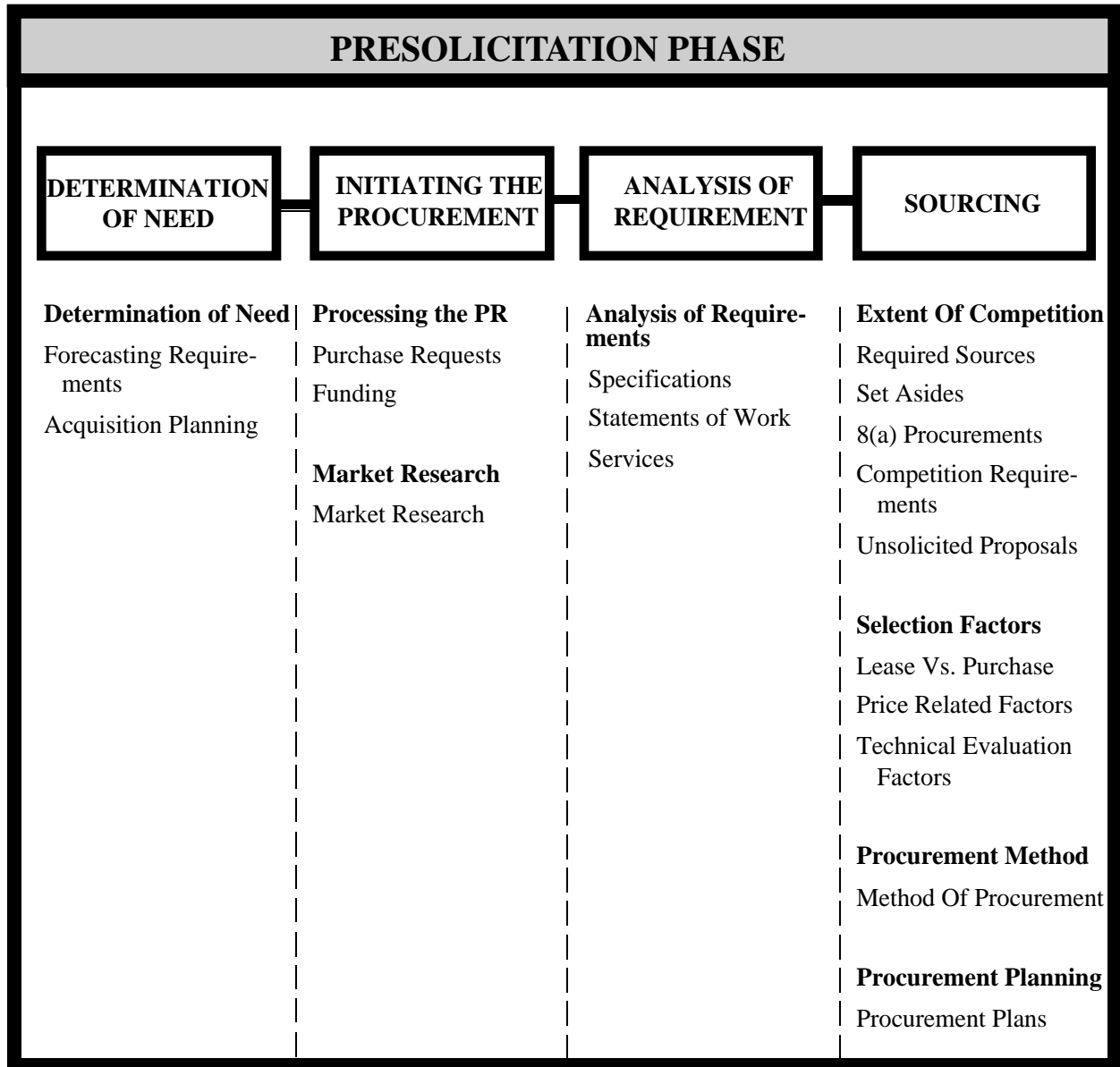


Exhibit 6-1. Presolicitation Phase of the Federal Acquisition Process.

Learning Objectives

The learning objectives for this chapter are located at the front of the section or subsection to which they apply and are highlighted with grey shading. After completion of this chapter, you will be expected to know all the highlighted learning objectives for this chapter.

Exhibit 6-2. Learning Objectives.

CHAPTER INTRODUCTION

In the Presolicitation Phase, the Government decides what is needed, and plans how it will be acquired. The major functions of the Presolicitation Phase are shown in Exhibit 6-1. This chapter describes these functions.

6.1 DETERMINATION OF NEED

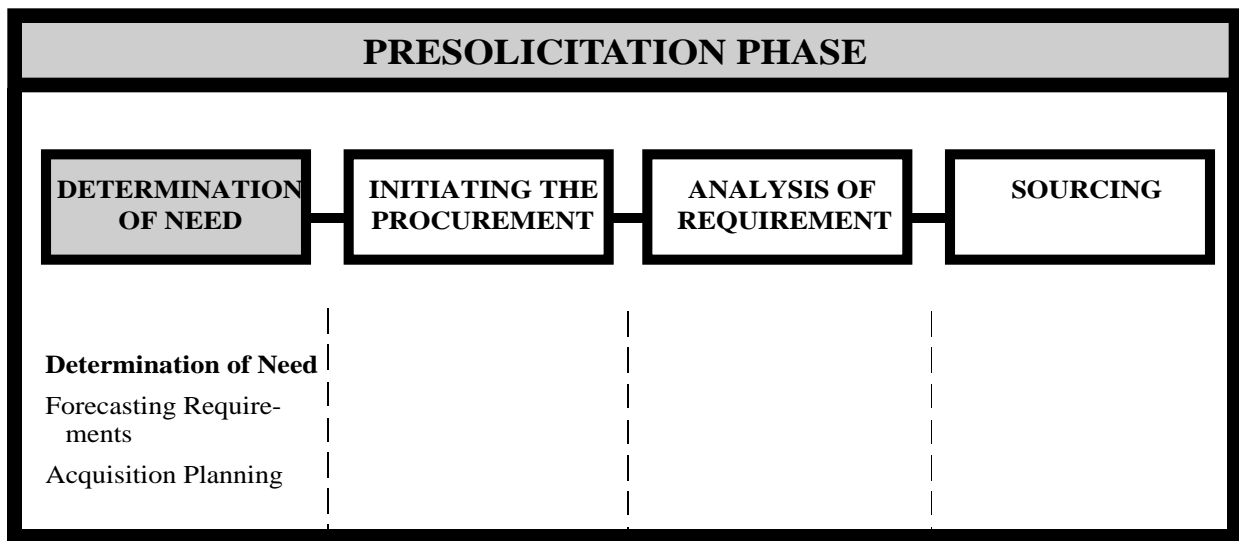


Exhibit 6-3. Determination of Need (First Function of the Presolicitation Phase).

Determination of need is the first function in the entire procurement process.

Once a need for supplies or services has been established, a decision is made whether to:

- Fulfill the need “in-house,” using agency facilities and personnel or
- Fulfill the need by contracting.

If a decision is made to fulfill the need by contracting, the procurement process is activated. For the process to be efficient and effective, it must be activated in accordance with a plan.

6.1.1 Forecasting Requirements

Describe and define:

- Who forecasts needs.
- Why forecasting is necessary.
- What role the CO plays.

Responsibility
for Forecasting
Needs

Each requiring activity has the responsibility to forecast its needs for supplies and services. (Requiring activities are any organizations that request supplies and services, e.g., program offices, inventory control points, etc.).

Purpose

Forecasting needs helps to ensure that the resulting procurements will:

- Support the mission of each requiring activity or program in a timely manner,
- Coincide with the preparation of budgets and availability of budgeted funds,
- Be accomplished in accordance with acquisition laws and regulations, and
- More fully realize the goals of the acquisition system as described in Chapter 1.

The CO's Contribution

By being aware of the current and future needs of the various organizations, the CO can (1) help requiring activities develop realistic program plans, schedules, and budgets and (2) recommend long-range strategies for reducing the resources and time required for mission accomplishment. Specifically, the CO can advise requiring activities on such matters as:

- Consolidating needs to attain economic ordering quantities.
- The availability of sources and strategies for enhancing competition.
- Market prices, conditions, and trends.
- Production and delivery lead times.
- The best time to enter the market.
- Costs incurred, milestones, problems, and lessons learned from previous acquisitions for comparable requirements.
- Strategies for reducing procurement and delivery leadtimes.

The CO uses forecasts in the next step — acquisition planning.

6.1.2 Acquisition Planning

FAR 7.1

Describe and define:

- Why acquisition planning is necessary.
- Who is involved in developing acquisition plans.
- The benefits of acquisition planning.
- Typical elements of acquisition plans.

Definition and Purpose

Acquisition planning means

FAR 7.101

"the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition."

Responsibility for Planning

Simply stated, after the need for supplies or services is identified, a plan is drawn up to obtain them. The plan identifies the people involved and what they must do.

The organizations and persons responsible for acquisition planning will vary from activity to activity. Generally, the responsibility is divided along organizational lines. For example, within GSA, the Federal Supply Service will plan its acquisitions; the Public Buildings Service will plan its acquisitions, etc.

Within an organization, planning is the responsibility of the heads of the divisions or branches that originate the requirements. Usually, a senior person within a "requiring activity" is responsible for planning a specific acquisition; this planner could be the responsible commodity manager, inventory manager, or program or project officer. That person should coordinate planning with those organizations or persons who will play a role in the acquisition, including the contracting activity.

CHAPTER 6

Benefits of Planning

Agencies perform acquisition planning and conduct market surveys for all acquisitions to:

- Maximize competition.
- Integrate the efforts of all personnel responsible for the acquisition.
- Ensure that needs are met in the most effective, economical, and timely manner.

Agencies establish criteria and thresholds at which greater detail and formality are required in the plan such as:

- Dollar value.
- Size.
- Complexity.
- Scope, nature, and circumstances of the acquisition.

Elements of an Acquisition Plan

Acquisition plans generally consider and discuss:

- (1) Acquisition background and objectives.
- (2) The plan of action.

In Exhibit 6-4, these two factors are broken down into their component elements. Depending for the most part on the requirement, these elements may have to be addressed in your acquisition plan.

Implementing Acquisition Plans

Acquisition plans are generally prepared by requiring activities and serve, among other purposes, as the basis for initiating the individual contracting actions necessary to acquire a system or support a program. For example, acquisition plans often provide for "breaking out" and separately competing requirements for installation, maintenance, spares, repairs, and the like. Each such requirement represents a separate contract action.

To initiate an individual contract action, the requiring activity prepares and forwards a Purchase Request (PR) to the CO. The CO in turn delegates authority, assigns responsibilities, and identifies milestones for that PR. For the purposes of this text, these decisions by the CO represent the "procurement plan" of the contracting office for that PR (see Section 6.4.4).

ELEMENTS OF A TYPICAL ACQUISITION PLAN**FAR 7.105**

1. Acquisition Background and Objectives.
 - Statements of need (what it is).
 - Applicable conditions.
 - Cost.
 - Capability or performance characteristics.
 - Delivery or performance-period requirements.
 - Trade-offs (among cost, schedule, etc.).
 - Risks.
 - Acquisition streamlining.
2. Plan of Action.
 - Sources.
 - Competition.
 - Source selection procedures.
 - Contracting considerations.
 - Budgeting and funding.
 - Product descriptions.
 - Priorities, allocations, and allotments.
 - Contractor vs Government performance (OMB Circular A-76).
 - Management information requirements.
 - Make or buy.
 - Test and evaluation.
 - Logistics considerations.
 - Government-furnished property.
 - Government-furnished information.
 - Environmental considerations.
 - Security considerations.
 - Milestones for the acquisition cycle.
 - Identification of participants in acquisition plan preparation.
 - Other considerations, such as energy conservation, standardizations, etc.

Exhibit 6-4. Elements of a Typical Acquisition Plan.

The Livingston's Grand Plan

As the Livingstons' had to do in "The House Dilemma" in Chapter Five, you must answer the first question of "What, precisely, do we want?" This is where determination of need and forecasting requirements come into play. You must determine first what you want and then whether it is possible on your existing budget. As in building a house, in purchasing for the Government your first steps are determining your needs and forecasting requirements.

Having identified your requirements, you must next answer the question "How do we plan to get what we want?" Using what you just read about acquisition planning can help you answer this question. You should list all of the objectives that you identified in the determination of need step, and write a plan for action in order to achieve them. You must decide what capabilities, qualifications, and experience a contractor should have (e.g., a general contractor with experience in home building and a record of satisfactory performance) in order to perform the required work. Your requirements must be within your budget. You need to set milestones for the delivery of specific parts of the house (e.g., date for when the house will be framed, date for when the dry wall will be completed, etc.). You should determine what types of materials you want the builder to use. As you can see, many of the things you wrote down in your determination of need step will help you with your acquisition plan.

The Federal Acquisition Process is an ongoing step-by-step process. Each step leads to the next. Planning is of utmost importance to the process. Your next step is initiating the procurement (i.e., putting the plan in action).

6.2 INITIATING THE PROCUREMENT

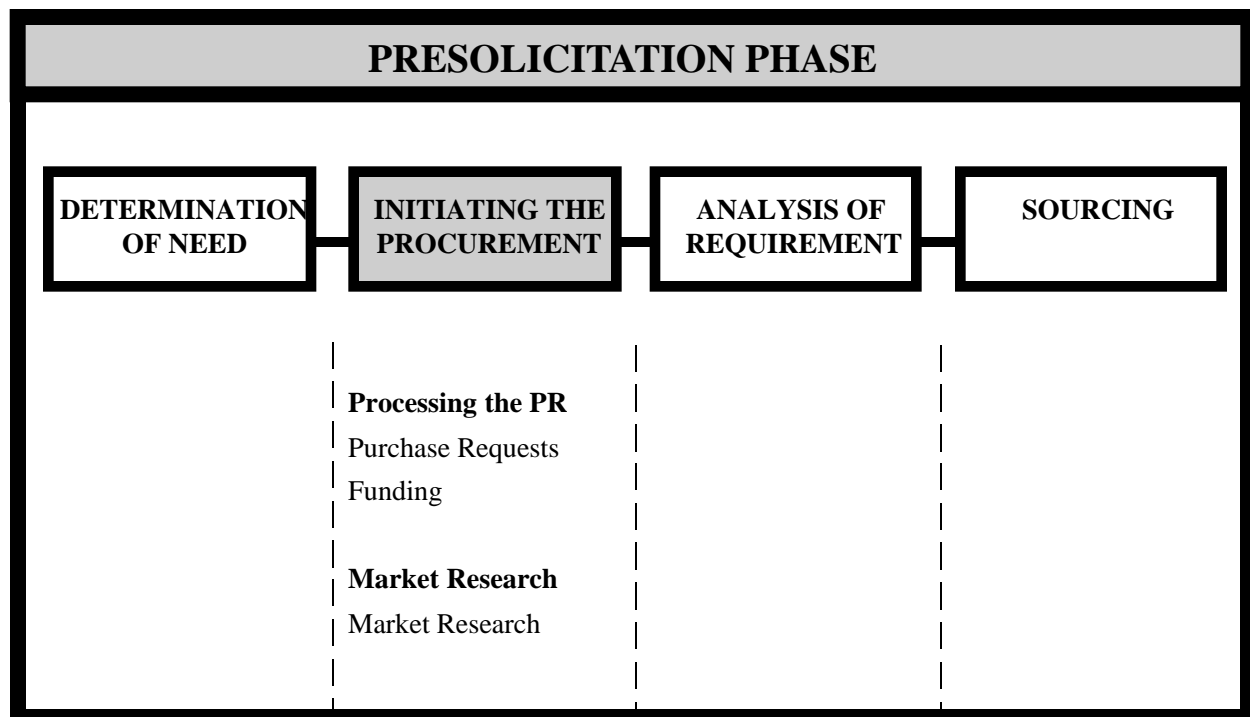


Exhibit 6-5. Initiating the Procurement (Second Function of the Presolicitation Phase).

After needs are determined, the requiring activity prepares and forwards a purchase request to the contracting activity for each individual procurement. The initial steps in a procurement are:

- Processing the PR.
- Certifying the availability of funds.
- Identifying the sources from which the supplies or services might be obtained and collecting data on that market.

6.2.1 Processing the Purchase Request

6.2.1.1 Purchase Requests

Define and describe:

- Purpose of the Purchase Request.
- Acceptance of the PR.
- Elements of a Purchase Request.
- Steps in processing accepted PRs.

Purpose

The purpose of a purchase request (PR) is to provide the CO with the information and approvals necessary for initiating a procurement.

The CO should advise and assist the requiring activity in preparing a PR. The more the requiring activity consults with the CO during acquisition planning, the more the CO can assist during PR preparation.

Accepting PRs

The PR should be a precise document. If there are any major deficiencies or omissions, the CO should not accept the PR but rather contact the requiring activity to obtain any missing information or make the necessary corrections.

Defective PRs

Procurements commenced on the basis of a defective PR are likely to be troublesome at some point in the process. For example, if a single source acquisition is initiated without justification and approvals, the action may later be protested and the entire process disrupted and delayed. Other consequences of accepting a deficient PR might include:

- Need to cancel a solicitation because of improper approvals or lack of funds.
- Failure to order an economic quantity.
- Failure to include price-related evaluation factors in the solicitation.

Elements

There is no Governmentwide standard form for PRs. As a result, PRs often vary in format from one contracting activity to the next. Despite differences in form, PRs generally tend to have certain elements in common. Exhibit 6-6 shows some of these elements.

TYPICAL ELEMENTS OF A PR

- Management reviews and approvals as required by agency policies.
- Certification of funds available for the procurement.
- Quantity of the item(s) to be procured.
- Description of the requirement:
 - specifications.
 - statement of work.
 - purchase descriptions.
- Any special packaging and marking requirements recommended by the requiring activity.
- Inspection and acceptance requirements.
- Delivery or performance requirements.
- Any special contract administration requirements recommended by the requiring activity.
- Any special provisions or clauses (e.g., options, Government-furnished property) recommended by the requiring activity.
- Price-related factors for award (if applicable) recommended by the requiring activity.
- Technical evaluation factors for award (if factors in addition to price are applicable) recommended by the requiring activity.
- Recommended sources.
- Justifications and approvals for other than full and open competition, if needed.
- Acquisition plan, if required.

Exhibit 6-6. Typical Elements of a PR.
**Steps in Processing
Accepted PRs**
After accepting the PR, COs often:

- Establish a contract file.
- Counsel managers on protecting source selection information from unauthorized disclosure.
- Enter the PR in the activity's "tracking" system.
- Start the clock on "Procurement Administrative Lead Time" (PALT). PALT represents the time between (1) acceptance of the PR and (2) award of the contract.

CHAPTER 6

6.2.1.2 Funding

FAR 32.7

Explain:

- How funds are committed.
- Funding issues.
- The Anti-Deficiency Act.

Committing Funds for Planned Acquisitions

In Section 2.1.2, you learned how funds are appropriated, apportioned, obligated, and converted into outlays. Recall that funds are obligated when the Contracting Officer (CO) awards a contract. The question is how appropriated funds are committed for obligation by the CO.

Two parties commit funds:

- The Authorizing Official, who enters appropriation data (a fund citation and estimated dollar amount) on the PR.
- The Finance Officer, who (1) deducts the PR's dollar amount from the requiring activity's funding account and (2) certifies the availability of those funds on the PR.

Importance of Verifying the Availability of Funds

It is improper to solicit offers unless there is a reasonable expectation that a contract will be awarded. Because a contract cannot be awarded without adequate funds, the availability of funds generally must be certified on the PR before offers are solicited. Similarly, funds must be available when processing a contract modification that will increase the contract price.

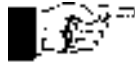
Funding Issues

The following aspects of funding are of particular importance to the CO.

- Funds are appropriated for either a specific use or for a category of uses. For example, some funds are only used for research and development programs, while others are used for operations and maintenance. The CO must ensure that the correct funds are cited.
- Funds have a life in terms of a date by which they must be obligated. In some cases, funds may be used only for work completed within a given fiscal year. Funds are normally “good” for one year or for a specific number of years. The CO must ensure that the procurement is completed (from solicitation of offers to contract award) before the funds “expire.”

- Funds must be adequate for the procurement. If the CO believes the funds are inadequate, he or she might request that the requiring activity either:
 - Make additional funds available, or
 - Reduce the quantity of supplies or level of service to be procured.

Anti-Deficiency Act



The CO ensures that the right kind and amount of funds are available for the solicitation and, later, for contract award. Failure to do so could result in delay or cancellation of the procurement. Even worse, from a personal standpoint, if the CO awards a contract and there are insufficient funds, he or she may be personally responsible for payment under the provisions of the Anti-Deficiency Act.

COs may solicit for unfunded, prospective requirements by:

- Making the solicitation "subject to the availability of funds."
- Including options for increased quantities or extension of the contract period.
- Use of Indefinite Quantity or Requirements terms and conditions (see Section 7.1.1.1).
- Incorporating clauses that provide for year-by-year funding of multiyear requirements.

6.2.2 Market Research

Describe the following elements of market research:

- Recognizing market data relevant to business decisions.
- Listing available sources of data on markets.
- Applying market data in making business decisions.

Purpose

Suppose you were considering purchasing a new car. Your first question might be, "What is available out there?" Other questions might be, "Which cars will suit my particular needs?," and "Are those cars in my price range?" To answer these and other questions, you do market research. Information obtained from that research would help you to identify suitable cars that are readily available, and affordable.

CHAPTER 6

Definition

Market research means:

FAR 10.001

“the process used for collecting and analyzing information about the entire market available to satisfy minimum agency needs.” The results of market research are used “to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.”

Requirements For

FAR 11.004

Market research is required for accomplishing the statutory goal of fulfilling Government needs by acquiring commercial products when such products would adequately satisfy those needs (see section 1.5). Market research is further required to:

- Promote full and open competition.
- Ensure that the need is met in a cost effective manner.

Collecting Data

The extent of market research and analysis will vary depending on the urgency, value, and complexity of the proposed acquisition. The following are among the types of data to collect:

- Availability of products suitable as is, or with minor modifications, for meeting the need.
- Terms and conditions and warranty practices under which commercial sales of the products are made.
- Requirements of controlling laws and regulations.
- Number of sales and length of time over which they must occur to provide reasonable assurance that a particular product is reliable.
- Distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates.
- Potential cost of modifying commercial products to meet particular needs, if required.

POTENTIAL SOURCES OF MARKET DATA

- Technical personnel, commodity specialists, price analysts, and other in-house experts on the supply or service and its market.
- Acquisition histories available in your contracting activity.
- Catalogs and periodicals.
- COs in other contracting activities and agencies.
- Industry buyers of the same or similar supplies or services.
- Sources sought synopses and surveys of potential suppliers.
- Trade and professional associations.
- Nonprofit standards and testing organizations.

Exhibit 6-7. Potential Sources of Market Data.

Application of the Data

Market data are applicable to virtually all preaward duties and tasks, such as:

- Reviewing the proposed specification or statement of work to ensure that it encompasses all acceptable products (if any) in the market.
- Determining when to buy.
- Establishing delivery schedules that are realistic in terms of market conditions and practices.
- Selecting sources for the solicitation mailing list.
- Determining whether to buy or lease.
- Establishing quantity breaks.
- Estimating the proper price level or value of the supplies or services.

6.3 ANALYSIS OF REQUIREMENT

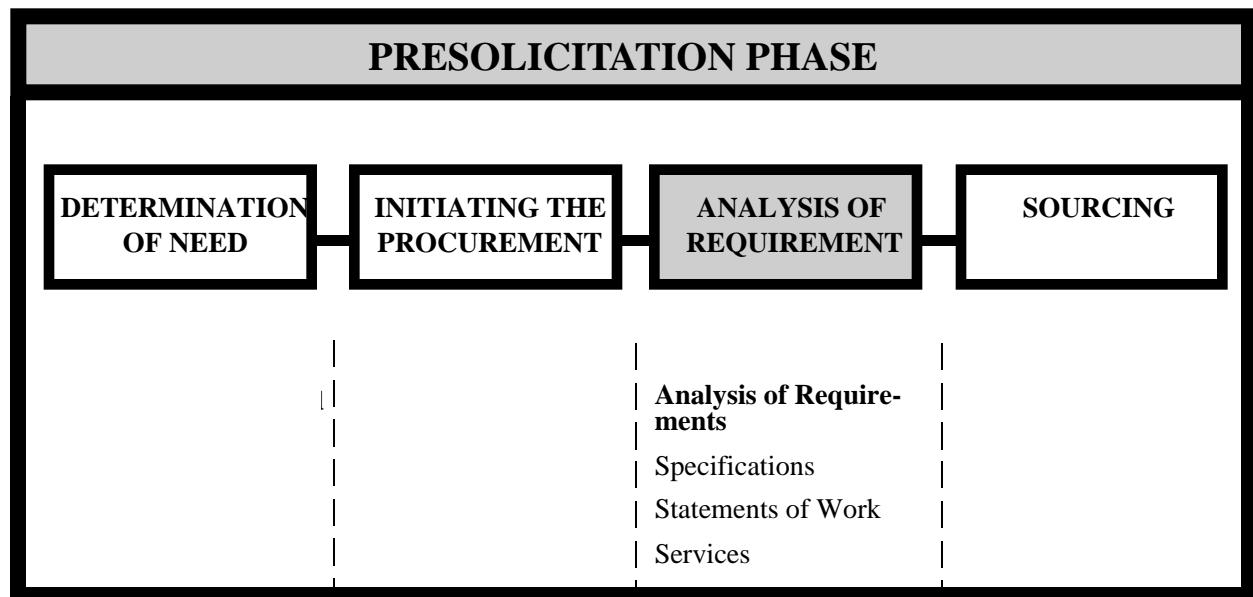


Exhibit 6-8. Analysis of Requirement (Third Function of the Presolicitation Phase).

Analysis of requirement is the third function in the Presolicitation Phase. You should note, however, that these Presolicitation Phase functions do not take place in isolation from each other. For example:

- The requirement must be analyzed to some degree before starting market research.
- The amount of funding is a function in part of the requirement.

6.3.1 Analysis of Requirements

6.3.1.1 Specifications

FAR Part 10

Describe and define the following:

- Types of specifications.
- Federal and Military indexes of specifications and standards.
- Impact of the specification on competition.
- Impact of the specification on responsibility for performance.
- Impact of the specification on cost or price.

Definition

FAR 10.001

Specification means

" a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. Specifications shall state only the Government's actual minimum needs and be designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired."

Specifications received from the requiring activity are reviewed by the CO. The CO may accept them as is or recommend improvements.

Types of Specifications

There are three types of specifications: Functional, Performance, and Design. (Note, however, that specifications for complex requirements may be in part functional, in part performance, and in part design.)

Functional Specifications

- Describe the deliverable in terms of performance characteristics and intended use, including those characteristics which at minimum are necessary to satisfy the intended use. The focus is on "What is to be done?" or "What need is to be fulfilled?"
- Does not specify any particular approach or type of product.
- Least restrictive type of specification.
- Example: A requirement for a system to purify water, leaving the door open to proposals for providing a chemical additive system, a filtration system, a distillation system, a biosystem, some combination of these systems, or any other approach that will achieve the Government's goals for purity, throughput (e.g., gallons per hour), and systems life.

Performance Specifications

- Describe the deliverable in terms of desired operational characteristics. Where an item is purchased against a performance specification, the contractor accepts general responsibility for design, engineering, and achievement of the stated performance requirements. The contractor has general discretion and election as to detail but the work is subject to the Government's reserved rights of final inspection and approval or rejection.
- Tend to be more restrictive than functional, in terms of limiting alternatives which the Government will consider and defining separate performance standards for each such alternative.
- Example: A requirement for a filtration system to purify water which is cast in terms of operational characteristics (e.g., measures and levels of purity, throughput, systems life, power requirements, etc.).

Design Specifications

- Establish precise measurements, tolerances, materials, in process and finished product tests, quality control, inspection requirements, and other specific details of the deliverable. The Government assumes liability for the design and related omissions, errors, and deficiencies in the specification and drawings.
- Are the least desirable type of specification under Federal procurement policies, which require the use of functional or performance specifications in lieu of design requirements "whenever practicable."
- Example: A requirement for a filtration system to purify water which includes blueprints for the casing, valves, impellers, filters, and power module and also specifies the materials to be used for each component of the system.

Standards

- Establish engineering and technical limitations and applications of items, materials, processes, methods, designs, and engineering practices. Standards include any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products or interchangeability of parts.
- Standards supplement specifications and are generally incorporated by reference in the solicitation document.
- "Voluntary standards" are those established by a private sector body and available for public use. To the extent applicable, give "voluntary" standards preference over all other types of product

descriptions (and give "commercial item descriptions" second priority).¹

FED Specs, MIL Specs,
& PDs

To define requirements in solicitations, CO's either cite applicable Federal or Military specifications or incorporate purchase descriptions.

Federal Specifications (FED Specs). Specifications and standards for products commonly used by Government Agencies. GSA lists them in the Index of Federal Specifications, Standards, and Commercial Item Descriptions. Applicable FED Specs are generally incorporated by reference in the solicitation. Unless otherwise authorized, specifications and standards listed in this index are mandatory when acquiring the supplies covered by them.

Military Specifications (MIL Specs). The Department of Defense (DoD) maintains MIL specs and publishes them in the DoD Index of Specifications and Standards. Applicable MIL Specs are generally incorporated by reference in the solicitation.

Purchase Descriptions (PDs). PDs describe physical characteristics or functions required to meet the Government's minimum need. Prepare PDs when Fed Specs or Mil Specs are inapplicable, excepted under FAR 10.006,¹ or do not fully cover the requirement.

Impact of the Specifica-
tion

When preparing or reviewing specifications, consider their impact on:

Competition. Specifications should only exclude those products or services which cannot satisfy the Government's actual minimum needs. For example, you may only require that a deliverable be compatible with the equipment of XYZ Corporation if such compatibility is really needed. Otherwise, the specification may improperly rule out products of other corporations that can meet the need.

Responsibility for performance. Any error, imprecision, ambiguity, or other such deficiency in a specification may, in part, relieve the contractor of responsibility for acceptability of the work. For example, suppose that a contract includes a design specification, and the contractor builds the device in conformance with the specification. If the device doesn't work, who is responsible?

Cost or price. Specifications have a direct effect on the price the Government pays. Specifications should state minimum needs. Avoid "goldplating" — stating unnecessary requirements. For example, it would be wasteful to require that timers be waterproof if the timers will be wall-mounted in an office building.

¹FAC 90-9

CHAPTER 6

6.3.1.2 Statement of Work

Describe:

- Basic elements of a Statement of Work (SOW).
- Related aspects of the requirement.
- Methods for obtaining industry feedback.

Definition

A Statement of Work (SOW) describes the contract work to be performed and incorporates any applicable specifications. The SOW is prepared by the requiring activity, based on the acquisition plan. It is included in the Purchase Request (PR). When the CO receives the PR, he or she reviews the SOW to ensure that it meets the criteria described in Exhibit 6-9.

CRITERIA FOR THE SOW

- Is a clear, precise, and complete statement of the work to be performed.
- Makes a clear-cut division of responsibility between the contracting parties.
- Does not exceed the Government's actual minimum need.
- Is not unduly restrictive.
- Is stated in terms that the market can satisfy.

Exhibit 6-9. Criteria for the SOW.

Elements of SOWs

The scope and elements of a SOW varies greatly depending on what is being procured. A SOW for a major system will be complex, quite long, and incorporate numerous specifications. A SOW for lawn-mowing service, however, will be fairly simple and short. It may or may not incorporate any specifications. Exhibit 6-10 is a listing of the items that may be included in a SOW.

Related Aspects of the Requirement

While reviewing the SOW, COs should consider related aspects of the requirement in terms of (1) consistency with the SOW and (2) potential impact on such goals as quality, timeliness, cost, risk, and competition. Related aspects of the requirement include, among others:

- Packaging and marking requirements.
- Inspection and acceptance criteria.
- Delivery or performance requirements.

- Instructions for preparing and submitting offers.
- Any applicable price-related and technical evaluation factors (see Section 6.4.2).

Industry Feedback on the SOW

Prior to soliciting offers, requiring activities may wish to (1) assess the interest of prospective suppliers in providing the required supplies or services and (2) obtain feedback from the market on the proposed SOW. Working with the CO, such feedback can be obtained through:

- Presolicitation notices.
- Presolicitation conferences.
- “Solicitations for Information and Planning Purposes” (i.e., draft solicitations circulated for review and comment).

ITEMS THAT MAY BE INCLUDED IN THE SOW

- Background.
- General scope of work/objectives.
- Contractor tasks.
- Functional/performance/design specifications (e.g., common nomenclature, kind of material, technical data, dimensions, size, capacity, principles of operation, restrictive environmental conditions, and intended use).
- References to related studies, documentation, specifications, and standards.
- Data requirements.
- Support equipment for contract end items.
- Government- and buyer-furnished property, facilities, equipment, and services.
- Government- and buyer-furnished documentation.
- Reporting requirements.
- Other data pertinent to requirement(s).

Exhibit 6-10. Items That May be Included in the SOW.

6.3.1.3 Services

FAR Part 37

1. State the criteria for:
 - Distinguishing personal from nonpersonal service contracts.
 - Distinguishing “advisory and assistance services” from other types of services.
 - Determining whether the Service Contract Act applies in a mixed supply and service contract.
2. Briefly describe:
 - Need for wage determinations by the Department of Labor.
 - Service Contract Act.

Definitions

Service contracts are awarded for the “performance of an identifiable task, rather than for furnishing an end item of supply.”

Personal vs. Nonpersonal Services

Services may be personal or nonpersonal:

- **Personal:** When contractor personnel appear to be, or are treated as, Government personnel.
- **Nonpersonal:** When contractor personnel are not subject to the supervision and control of Government personnel.

A nonpersonal services contract may involve either:

- **Professional** (e.g., engineering and technical) or
- **Nonprofessional** (e.g., janitorial) services, or both.

Agencies may not award personal service contracts unless contracting for such services is specifically authorized by statute. Nonpersonal service contracts are very common and include services such as those listed in Exhibit 6-11 on the next page.



But, beware: A nonpersonal services contract, if improperly administered, may be viewed as being a personal services contract. If so, it may be improper.

EXAMPLES OF NONPERSONAL SERVICES**FAR 37.101**

- Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.
- Routine recurring maintenance of real property.
- Housekeeping and base services.
- Advisory and assistance services.
- Operation of Government-owned equipment facilities and systems.
- Communication services.
- Architect-Engineering.
- Transportation and related services.

*Exhibit 6-11. Nonpersonal Services.***Service Contract Act
& Wage Determinations**

Generally, contracts for services are subject to the Service Contract Act (SCA) of 1965, which provides for “minimum wages and fringe benefits as well as other conditions of work...”

FAR 22.1

If a proposed contract involves services, the CO may be required to request wage determinations from the Department of Labor for some or all of the employees who provide the service. The Secretary of Labor is responsible for determining the prevailing wage rates by different geographic areas for those classifications of service employees that are covered by the Act. The CO includes the wage rates in the solicitation; offerors are then on notice that those rates are the minimum that must be paid under the resulting contract.

Sometimes, services and supplies are required under the same contract. As a general rule, if the service work is an incidental part of contract performance, the Service Contract Act does not apply.

CHAPTER 6

Advisory and Assistance Services Agencies sometimes contract for “advisory and assistance” services of the types described in Exhibit 6-12.

ADVISORY AND ASSISTANT SERVICES

FAR 37.203

- Individual experts and consultants.
- Studies, analyses, and evaluations.
- Management and professional support services.
- Engineering and technical services.

Exhibit 6-12. Advisory and Assistant Services.

Many times the persons most qualified to perform these services are former Government (civilian and military) personnel. Also, contractors who perform contracts for advisory and assistance services may later employ ex-Government personnel who worked with such contracts. Because of real and perceived conflicts of interest and ethical problems associated with such employment practices by the contractors, special approvals and controls have been established.



Before processing requests for advisory and assistance services, CO's ensure that the requested services may lawfully be acquired and that all required justifications, approvals, and certifications have been provided by the requiring activity.

6.4 SOURCING

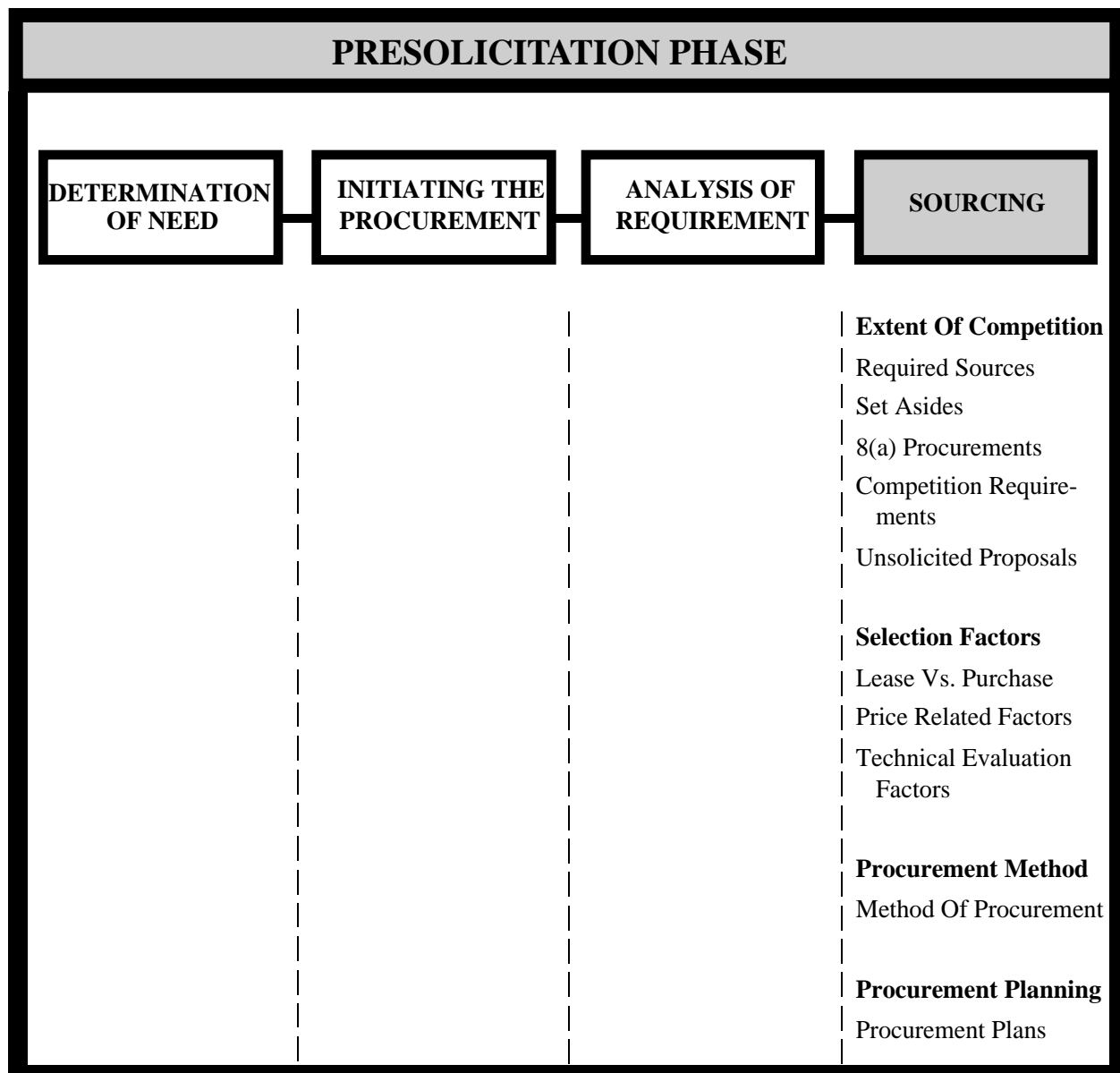


Exhibit 6-13. Sourcing (Fourth Function of the Presolicitation Phase).

Sourcing is the final function of the Presolicitation Phase. It involves:

- Determining the extent of competition for the requirement.
- Identifying the factors that will apply in selecting an offer for award.
- Selecting the method of procurement.
- Preparing a plan for soliciting and evaluating offers.

6.4.1 Extent of Competition

One goal of the procurement process is to create competition among sources that provide supplies and services. However, other goals may result in limiting competition. The extent to which you foster competition depends on factors such as:

- Requirements in law or regulation to use specific suppliers.
- Requirements to set aside procurements for small business.
- Availability of suppliers under the 8(a) program.
- Requirements for "full and open" competition.
- The validity and suitability of an unsolicited proposal.

6.4.1.1 Required Sources

- List and describe the various required sources of supplies and services.
- Describe a solicitation mailing list and how it is used.

A number of statutes and regulations restrict the sources that may be solicited. If the needed supplies or services are available from a required source, the CO must order from that source instead of soliciting offers from the open market. With respect to supplies and services generally, CO's are required to consider the sources in Exhibit 6-14. In addition, specific suppliers have been prescribed for the supplies and services listed in Exhibit 6-15.

**REQUIRED SOURCES OF SUPPLIES AND SERVICES,
IN PRIORITY ORDER**

FAR Part 8

Supplies

- Agency inventories.
- Excess from other agencies.
- Federal Prison Industries, Inc.
- Procurement lists of products available from the Committee for Purchase from the Blind and Other Severely Handicapped (“Workshops”).
- Wholesale supply sources, such as:
 - Stock programs of the GSA.
 - Defense Logistics Agency.
 - Department of Veterans Affairs.
 - Military inventory control points.
- Mandatory Federal Supply Schedules.
- Optional use Federal Supply Schedules.
- Commercial sources, including educational and nonprofit institutions.

Services

- Procurement lists of services available from the Committee for Purchase from the Blind and Other Severely Handicapped (“Workshops”).
- Mandatory Federal Supply Schedules and mandatory GSA term contracts for personal property rehabilitation.
- Optional use Federal Supply Schedules and optional use GSA term contracts for personal property rehabilitation.
- Federal Prison Industries, Inc.
- Other commercial sources, including educational and nonprofit institutions.

*Exhibit 6-14. Required Sources of Supplies and Services,
in Priority Order.*

SUPPLIES AND SERVICES FROM SPECIFIC SOURCES

FAR 8.002

Required sources have been designated for the following commodities:

- Jewel bearing and related items.
- Public utility services.
- Printing and related supplies.
- Automatic data processing and telecommunications acquisitions.
- Leased motor vehicles.
- Excess strategic and critical materials.
- Helium.

Exhibit 6-15. Supplies and Services from Specific Sources.

Mailing Lists of Open
Market Sources

FAR 14.205

When required sources cannot meet the Government's need, CO's turn to the open market. This entails identifying potential suppliers and developing mailing lists of the suppliers. Prospective offerors are added to these lists after they submit an application describing the company and the kinds of supplies and services that they offer.

When issuing an IFB or RFP, the CO solicits:

- Sources recommended in the PR by the requiring activity.
- Sources on the appropriate mailing list.
- Other sources that may respond as a result of the publicizing described in Chapter 7.

Using source lists and a solicitation mailing list:

- Helps to promote competition commensurate with the dollar value of the proposed contract
- Saves time and effort in finding sources for individual PRs.

6.4.1.2 Set-Asides

FAR 19.5

- Define set-aside.
- Define small business.
- List types of set-asides.
- Explain the “Rule Of Two.”

Set-Asides Defined

A set-aside is an acquisition reserved exclusively for small businesses and/or businesses in labor surplus areas. The CO sets aside an individual acquisition or class of acquisitions to:

- Ensure that a fair proportion of Government contracts in each industry category is placed with small businesses.
- Maintain or mobilize the nation’s full-productive capacity.
- Aid war or national defense programs.

Small Business Defined

FAR 19.001

A small business concern means a concern (including its affiliates) which is (1) independently owned and operated, (2) not dominate in the field of operation in which it is bidding on Government contracts, and (3) qualifies as a small business under the criteria and size standards in 13 CFR Part 121. A “small disadvantaged business concern” means a small business concern that is (1) at least 51% unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or (2) a publicly owned business that has at least 51% of its stock unconditionally owned by one or more socially and economically disadvantaged individuals.

Size Standards

FAR 19.1

The Small Business Administration (SBA) establishes size standards on an industry-by-industry basis. The standards are based on either the number of employees in a company or the annual receipts of a company. The size standards are listed in the FAR for each Standard Industrial Classification (SIC) code. The number of employees or annual receipts for each SIC code establish the maximum limits on eligibility for classification as a small business concern. Some examples are provided in Exhibit 6-16.

EXAMPLES OF SIZE STANDARDS SET BY THE SBA

FAR 19.102

SIC Code	Description	Size
1541	General Contractor-Industrial Buildings	\$17 Million
1731	Electrical Work	\$7 Million
7538	General Automotive Repair Shops	\$3.5 Million
3111	Leather Tanning and Finishing	500 People
3398	Metal Heat Treating	750 People
3482	Small Arms Ammunition	1000 People

Exhibit 6-16. Examples of Size Standards Set by the SBA.

Size standards are used as follows:

- The CO issues an IFB for electrical work.
- The IFB is set aside for small business.
- The size standard in the IFB is expressed as “SIC Code 1731, Size Standard \$7.0 million.” Only electrical contractors with annual average gross revenues of \$7.0 million or less are eligible for award.

Purpose of Set-Asides

Agencies establish set-aside programs to achieve their small business goals. To achieve a fair proportion of set-asides, agencies may decide on a case-by-case basis or on a “class” basis, (e.g., all purchases of a given commodity are set aside for small business). Decisions to set aside all or a part of a given acquisition may involve the following:

- Representatives of the Small Business Administration.
- Representatives of the requiring activity.
- The small business specialist in the contracting office.
- The CO.

Types of Set-Asides

The small business and labor surplus area set aside programs can be further divided into the following four categories:

1. Total Small Business Set-Aside

Under a total set-aside, the entire amount of an individual acquisition or class of acquisitions is reserved for small business concerns.

2. Partial Small Business Set-Aside

Under a partial set-aside, part of the requirement is reserved exclusively for small business concerns. This may happen when a requirement is too large to be filled entirely by a small business. To establish a partial set-aside, the CO must be able to divide the requirement into reasonably sized lots or batches.

3. Small Business—Small Purchase

FAR 13.105

Small purchases have generally been set-aside for small business. There are several exceptions to this broad set-aside. When a purchase exceeds 10% of the small purchase threshold, for instance, the CO may solicit quotations from large business concerns if there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery.

4. Labor Surplus Area (LSA)

FAR 20.2

Set-asides may also be made for the purpose of aiding LSA. A LSA is an area of concentrated unemployment or underemployment. Under this program, set-aside procurements may be awarded to a LSA concern whether it is a small or a large business or not. You should note that, generally, DoD contracts are excluded from this program.

Set-Aside Priority

The priority or order of precedence for awarding contracts under the set-aside programs is shown in Exhibit 6-17. COs also encourage prime contractors to use the same order of precedence when placing subcontracts. DoD priorities are different and are set forth in the DoD FAR Supplement.

SET-ASIDE PROGRAM ORDER OF PRECEDENCE

1. Total set-aside for small businesses located in labor surplus areas.
2. Total set-aside for small businesses.
3. Partial set-aside for small businesses located in labor surplus areas.
4. Partial set-aside for small businesses.
5. Total labor surplus area set-aside for concerns in labor surplus areas.

Exhibit 6-17. Set-Aside Program Order of Precedence.

Based on the priority ranking in Exhibit 6-17, the CO applies the "rule of two" to each type of set-aside in turn. This continues until the CO either finds a set-aside that satisfies the rule or decides that no set-aside may be made. For a set-aside to satisfy the "rule of two," the CO must have a reasonable expectation of:

- Receiving offers from at least two responsible concerns that are eligible for the set-aside, and
- Awarding the contract at a fair market price if competition is restricted only to eligible concerns.

For labor surplus area set-asides, however, note that the FAR substitutes "a sufficient number" and "reasonable prices" for "at least two" and "fair market price", respectively, when applying the rule.

6.4.1.3 8(a) Procurements

- Define the purpose of the 8(a) Program.
- Describe why an 8(a) program might be used to meet a specific requirement for supplies or services.

Purpose

FAR 19.8

Section 8(a) of the Small Business Act of 1953 authorizes the Small Business Administration (SBA) to serve as a prime contractor in meeting the requirements of Federal agencies. SBA then subcontracts with small businesses that are at least 51% owned by socially and economically disadvantaged persons. The program gives such firms an opportunity to develop into experienced, strong competitors for future contracts. However "an 8(a) contract may not be awarded if the price of the contract results in a cost to the awarding agency which exceeds a fair market price."

When the award price is likely to exceed \$3 million, award of an 8(a) contract may have to be made through competitive sealed bid or negotiated procedures.

Utility

While some 8(a) acquisitions must now be competed, many 8(a) acquisitions are not subject to the requirements of Full and Open Competition. This translates into reduced lead time for award. Moreover, many 8(a) contractors have proven to be sure, reliable, and economical performers. Once again, market research is the key to making the 8(a) program work for your agency.

6.4.1.4 Competition Requirements

FAR Part 6

- Define and describe full and open competition (FAOC).
- Describe when other than full and open competition is permitted.

FAOC Defined

FAR 6.003

The Competition In Contracting Act (CICA) of 1984 requires COs to promote and provide for FAOC in soliciting offers and awarding contracts. FAOC means that all responsible sources are permitted to compete.

Other Than FAOC

FAR 6.3

FAOC is not required for contracts awarded through the small purchase procedures of FAR Part 13 or, for the most part, when ordering against multiple award schedules of the General Services Administration. In addition, there are seven statutory circumstances that permit contracting without FAOC (see Exhibit 6-18).

Exclusion of Sources

FAR 6.2

CO's also have statutory authority to exclude some sources from competing for a particular acquisition, when necessary to:

- Set-aside the contract (i.e., to exclude firms other than small business from competing for the award).
- Make a competitive award to an 8(a) firm.
- Establish secondary or back-up sources for national defense purposes.
- Establish or maintain certain research and development organizations.

CIRCUMSTANCES PERMITTING OTHER THAN FULL AND OPEN COMPETITION

1. Only one responsible source (or a limited number for DoD, NASA, Coast Guard) and no other supplies or services will satisfy agency requirements, such as when:
 - No other source is available.
 - The contract is a “follow-on” for the continued development or production of a major system or highly specialized equipment or for the provision of highly specialized services, if switching contractors would result in unacceptable delays or a substantially higher cost.
 - The contract is in response to an unsolicited research proposal (see section 6.4.1.5).
2. Unusual and compelling urgency, when:
 - Time does not permit FAOC, and
 - Delay in award would result in serious financial or other injury.
3. Industrial mobilization; or engineering, developmental, or research capability, when there is a need for:
 - Maintaining a facility, producer, manufacturer, or supplier in case of a national emergency or wartime industrial mobilization, or
 - An essential engineering or research and development capability to be provided by educational or nonprofit institutions or federally funded research and development centers.
4. International agreements, when the terms of an international agreement or treaty preclude FAOC.
5. Authorized or required by statute, as is the case when procuring from:
 - UNICOR (Federal Prison Industries).
 - Qualified Nonprofit Agencies for the Blind or other Severely Handicapped.
 - GPO or GPO contracts for printing and binding.
 - 8(a) contractors.
 - Other required sources.
6. National Security, when it would be compromised by broad disclosure of needs.
7. Public Interest, when the agency head determines that FAOC would be contrary to it.

Exhibit 6-18. Circumstances Permitting Other than Full and Open Competition.

In most instances, a written justification is required if FAOC is not provided for. Generally, the justification is prepared by the CO based on information provided by the requiring activity. Depending on the dollar value of the proposed contract, the justification must be approved in writing by:

- The CO (if the proposed contract does not exceed \$100,000).
- The competition advocate (if between \$100,000 and \$1,000,000).
- The head of the “procuring” (i.e., generally the same as contracting) activity or designee (if between \$1,000,000 and \$10,000,000).
- The senior procurement executive (if over \$10,000,000) of an agency other than DoD, NASA, or the Coast Guard.

6.4.1.5 Unsolicited Proposals

FAR 15.5

- Define the term unsolicited proposal.
- Explain the procedure for handling and receiving an unsolicited proposal.

Definition

An unsolicited proposal is:

"a written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request..."

FAR 6.302-1(a)(2)(i),
15.503

Award without full and open competition is permitted if a firm has submitted an unsolicited research proposal that:

- A. Demonstrates a unique and innovative concept or a unique capability of the source to provide the particular research services proposed.
- B. Offers a concept or services not otherwise available to the Government, and
- C. Does not resemble the substance of a pending competitive acquisition.

Processing Unsolicited Proposals

Federal agencies are responsible for establishing contact points and procedures for the receipt, handling, and evaluation of unsolicited proposals. The Government only comprehensively evaluates unsolicited proposals that are related to its mission. If an unsolicited proposal receives a favorable evaluation, the requiring activity forwards the unsolicited proposal to the CO. However, the CO may only award without competition under the conditions specified in FAR 15.507.

6.4.2 Selection Factors

When competition is anticipated, the CO must have a basis for selecting the best offer. Price or cost to the Government is a mandatory factor in source selections. Other factors may also be used to select the source whose offer will be most advantageous to the Government. The following subsections identify some of those factors.

6.4.2.1 Lease vs Purchase

FAR 7.4

- Explain the criteria for determining whether leasing or purchasing is more advantageous to the Government.
- Identify types of equipment commonly leased.

The Government solicits offers for equipment by leasing, purchasing, or both. If the CO decides to solicit both kinds of offers, he or she evaluates them and determines whether a purchase or a lease represents the lowest cost to the Government. Leasing with an option to purchase is also possible.

Criteria

Agencies decide whether to lease or purchase equipment on a case-by-case evaluation of comparative costs and on other factors such as:

- Net purchase cost vs the cumulative leasing cost.
- Potential obsolescence.
- Immediate need vs uncertain long-term need.
- Transportation, installation, and maintenance costs.
- Funding availability.

Types of Equipment Commonly Leased

Some examples of equipment that may be suitable for leasing are:

- ADP (automated data processing).
- Materials handling and heavy construction equipment.
- Automobiles.
- Office machines.

6.4.2.2 Price-Related Factors

FAR 14.201-8 & 15.605

Purpose

- Define price-related factors and their purposes.
- List typical price-related factors.

At times, contracting officers can determine the lowest priced offer simply by looking at the bottom line. For other procurements, the lowest priced item actually might cost the Government more than a higher priced item, when the cost of ownership is considered. For example, Brand A might cost \$100 less to buy but cost \$300 more a year in electricity than Brand B. Hence, like any other consumer, the Government needs the flexibility to select that offer or combination of offers that represents the “best buy” in terms of lowest total cost to the Government over the expected life of the deliverable. Price related factors provide the Government that flexibility.

One of the most commonly applied factors is transportation costs. For example:

Company B is the low offeror. However, delivery is FOB origin, meaning the Government will pay delivery charges to the destination. The cost of shipping from Company A is \$900 and the cost of shipping from Company B is \$2100. The price-related factor (transportation) would result in total costs to the Government as follows:

- Company A — $\$60,000 + \$900 = \$60,900$
- Company B — $\$59,200 + \$2,100 = \$61,300$

Accordingly, it would be in the “best interests of the Government” to award to Company A.

To be fair to the offerors, however, the Government must tell offerors in the solicitation which price-related factors, if any, will apply in calculating the “best buy” price. One of the contracting officer’s roles in source selection planning is to select price-related factors for the procurement.

Exhibit 6-19 lists some of the more commonly applied factors.

COMMONLY APPLIED PRICE-RELATED FACTORS

FAR 14.201-8

1. Foreseeable costs or delays:
 - Transportation costs.
 - Cost of furnishing government property to the contractor.
 - Prices for various options.
 - Submission of separate prices for leasing the item vs buying it.
 - Proposed or expected costs for maintenance, warranty, repairs, training, installation, manuals, spares, and supplemental supplies.
 - Expected energy costs.
 - Life-cycle cost (i.e., expected life, salvage value; discounted total cost of ownership).
2. Changes requested by an offeror, provided that the offer is not rejected.
 - Assumed Economic Price Adjustments (if offerors propose different terms than established in the solicitation).
3. Advantages or disadvantages from making more than one award.
 - Incremental pricing (i.e., separate prices for different lots—such as one price for the first 100 of the item, and a separate price for the next 500).
 - Family buy pricing (i.e., separate prices for different combinations of line items).
 - \$500 is used as administrative cost for each additional award made.
4. Federal, State, and local taxes.
5. Origin of Supplies
 - Buy American Act.
 - Trade Agreements Act.

Exhibit 6-19. Commonly Applied Price-Related Factors.

NOTE: Price-related factors are listed in Section M of the solicitation.

6.4.2.3 Technical Evaluation Factors

FAR 15.605

- State the role of the CO in reviewing the technical evaluation factors.
- Describe technical evaluation factors and their purposes.
- Define the terms reliability and validity.

CO's Role in Establishing Factors

When the contracting officer selects an offer for award based on more than just price, these non-price related factors are known as technical evaluation factors. The factors are drafted by the requiring activity, reviewed by the CO for clarity and completeness, and included in the solicitation.

Purpose of Technical Evaluation Factors

Technical evaluation factors are used when the quality of technical performance is as important as, or more important than, price. Exhibit 6-20 lists potential technical evaluation factors.

POTENTIAL TECHNICAL EVALUATION FACTORS

- Understanding the problem.
- Technical approach or methodology.
- Qualifications of key personnel.
- Experience in performing the same or similar work.
- Management capability.

Exhibit 6-20. Potential Technical Evaluation Factors.

“Go/No-Go”

Sometimes the only issue is whether the contractor's technical proposal is or is not acceptable. In these cases the technical evaluation factors are used only on a “go/no go” basis.

Greatest Value

In other cases, proposals are scored or rated against the factors by technical personnel to help determine which offerors have the best potential for successfully completing the work. Higher rated proposals are given more favorable consideration than lower rated proposals. At times, based on technical rankings, the CO will award to an offer with a higher price than an offer that ranked lower on technical factors.

For example:

If the statement of work requires the development of an item that will later be produced in quantity, a technical evaluation factor might be “Design for Producibility.” The extent to which the producibility factor is addressed in the proposal is evaluated and rated.

Reliability and Validity To achieve the goal of identifying the “best” offeror, evaluation factors must be reliable and valid:

To be reliable, a factor should cause comparable evaluators to evaluate the same proposal consistently.

To be valid, a firm ranking high on the factor should in fact have a higher probability of successfully performing the work than a firm that ranks low on the factor.

Business Management Factors Some technical factors address the capability of the offeror to perform the work, as opposed to the technical merits of the proposal. When used in ranking proposals, such factors are often referred to as “business management” factors. If applied on a “pass/fail basis,” such factors represent “special standards of responsibility” for use in determining an offeror's responsibility (see section 7.4.1.2).

6.4.3 Procurement Method

Describe these procurement methods and the criteria for using them:

- Small Purchase Procedures
- Sealed Bidding
- Negotiation
- Two-Step Sealed Bidding

The contracting officer completes the pre-solicitation phase by deciding which of the above four “methods of procurement” will be used for actually soliciting offers.

This decision about which method to use is based on factors such as the ones listed below in Exhibit 6-21:

FACTORS IN DETERMINING THE METHOD OF PROCUREMENT

- Estimated cost or price of the item or service.
- Whether an item exists or must be developed.
- Complexity of the work to be performed.
- Type of specifications used.
- Competitive nature of the supplies or services to be acquired.

Exhibit 6-21. Factors in Determining the Method of Procurement.

Small Purchase
Procedures

FAR Part 13

Small purchase procedures are used for the acquisition of supplies, nonpersonal services, and construction when the aggregate amount does not exceed \$25,000. Among the small and other simplified purchasing procedures of Part 13:

- Purchase Orders.
- Blanket Purchase Agreements.
- Imprest Funds.

It is common for agencies to assign responsibility for placing delivery orders against established contracts to small purchase contract activities, even when the price of an order exceeds the \$25,000 threshold that applies to the small purchase procedures in Part 13 of the FAR.

Small purchase procedures are simplified because many of the requirements applicable to sealed bidding and to negotiation procedures do not apply, particularly in the following areas:

FAR 13.106

- Solicitations:
 - No requirement for an IFB or RFP.
 - Can be oral rather than in writing, save for construction contracts over \$2,000.
- Competition:
 - Exempt from requirements for FAOC (see Section 6.4.1.4).
 - No requirement to compete purchases under \$2,500 (i.e., 10% of the small purchase threshold) if the CO considers the price to be reasonable.
 - Required only to obtain competition from a reasonable number of sources for purchases over \$2,500 (but not in excess of \$25,000)
- Solicitation provisions and contract clauses: Many do not apply to small purchases.
- Forms: Simplified, less time consuming to complete.

As might be implied by the low dollar threshold, supplies acquired by small purchase procedures are often standard, off-the-shelf items readily available from local dealer or vendor inventory. Those items can be delivered in a matter of days or purchased over-the-counter. Similarly, services acquired in this manner are generally of short duration and may be obtained from the local market.

Small purchase procedures are especially useful for fulfilling small, repetitive needs from the local market place: office supplies; automotive parts and services; equipment repair; parts or services for building maintenance, etc. Small purchases:

- Are generally reserved for small business concerns.
- Reduce administrative costs to the Government.
- Expedite the acquisition of supplies or services.

COs use the small purchase procedure that is most appropriate for the specific acquisition.

Sealed Bidding

Sealed Bidding is generally used for the acquisition of supplies or services that can be precisely described and competed only on the basis of price and price-related factors. In addition, the following conditions must also be present:

FAR 6.401

- Time permits the solicitation, submission, and evaluation of sealed bids.
- It is not necessary to conduct discussions with the offerors about the bids (adequate item descriptions or specifications are available).
- There is a reasonable expectation of receiving more than one sealed bid.

When sealed bidding is used:

FAR Part 14

- The CO publicizes the proposed action.
- The CO issues an Invitation for Bids (IFB).
- Offerors submit sealed bids.
- The bids are publicly opened.
- Award is made to the low, responsive, responsible bidder.

The low bid price is the “evaluated” low price. That is, price-related factors, such as transportation costs, are considered together with the bid price to determine which bid results in the lowest overall or evaluated cost to the Government. Price-related factors, if any, must be stated in the IFB.

Negotiation Procedures

FAR Part 15

Negotiation procedures are used when sealed bidding is not appropriate. Negotiation means contracting through the use of either competitive or other-than-competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract.

When competitive negotiation is used, the CO generally will:

- Publicize the proposed action.
- Issue a request for proposals (RFP).
- Evaluate proposals (technical and price).
- Establish a “competitive range” that consists of proposals that have a reasonable chance of being selected for award.
- Hold discussions with offerors in the competitive range.

- Request best and final offers from offerors in the competitive range.
- Award a contract based on price and the other evaluation factors stated in the RFP.

For noncompetitive proposals (i.e., “sole source” procurements), the CO negotiates with the offeror until satisfied that the contract price and other terms and conditions are acceptable to the Government.

Two-Step Sealed Bidding

Two-Step Sealed Bidding is a combination of competitive negotiation and sealed bidding. The procedure is designed to obtain the benefits of sealed bidding when adequate specifications are not available and discussions with offerors might be necessary. The steps are:

FAR 14.5

1. The CO issues a request for technical proposals after publicizing the proposed action. Technical proposals received are evaluated, and, if necessary, discussed. The objective is to determine the acceptability of the supplies or services offered. Pricing is not involved.
2. Sealed bids are solicited from only those sources that submitted acceptable technical proposals under step one. Award is made as in sealed bidding. Step 2 is not publicized.

6.4.4 Procurement Planning

- Define procurement planning.
- Describe a procurement plan, listing the basic elements.
- Describe the source selection elements that need to be incorporated in the overall procurement plan.
- Describe formal vs informal source selection.
- Identify the selection official in formal source selections.

Definition and Purpose

In Section 6.1.2, we discussed acquisition planning by requiring activities and stated that such plans serve, among other purposes, as the basis for initiating Purchase Requests (PRs). This section discusses planning by COs for carrying out their responsibilities for awarding contracts against PRs.

For the purposes of this text, procurement planning by the CO is covered as the last act of the presolicitation phase. However, COs begin planning the steps in awarding a contract from the moment that they are apprised of a requirement. Procurement planning is discussed at this point because the plan must be complete before the CO moves on to the solicitation-award phase.

COs generally put their plan for awarding a contract in writing only for a complex requirement that will take an extended period of time to award. Whether or not the plan is committed to writing, the CO for any acquisition must:

- Record and document the key procurement planning decisions (e.g., on the extent of competition and price-related factors).
- Identify tasks necessary to award the contract and key decision points.
- Identify the responsible person or office for each such task (e.g., for conducting a technical evaluation).
- Establish and track milestones (e.g., the due date for completing a technical evaluation).
- Identify officials who are responsible for concurrences, clearances, or approvals.

The CO's plan therefore usually includes or addresses the items described in Exhibit 6-22.

TYPICAL ELEMENTS OF A PROCUREMENT PLAN

- The Purchase Request (PR).
- Documentation of discussions and agreements with the requiring activity on elements of the PR.
- Decisions on the extent of competition for award, including any necessary justifications for restricting competition.
- Decisions on selection factors to be applied in competitive acquisitions, and the rationale for each such factor.
- Decision on the method of procurement.
- Preliminary decisions on provisions and clauses for the for the acquisition (e.g., on type of contract).
- Milestones for awarding the contract.
- Related tasks (e.g., technical evaluation of offers).
- Persons or offices responsible for performing the tasks and meeting designated milestones.
- Officials responsible for concurrences, clearances, or approvals.
- Preliminary plans for administering the contract (see Section 8.1.1 of this text).

Exhibit 6-22. Typical Elements of a Procurement Plan.

In addition to the stated purpose of a procurement plan, there is another benefit to the CO. When all of the current procurement plans in the contracting office are taken as a whole, the CO can use them to:

- Forecast workload and staffing levels.
- Make major work assignments within the office.

Source Selection Elements of the Plan

When planning for an acquisition, the CO must consider how the eventual awardee(s) will be selected and include the appropriate clauses and selection factors in the solicitation. Among the selection considerations are:

- Determination of number of awards.
- Identification of all price-related factors.
- Identification of any technical and business management evaluation factors.
- Overall evaluation weight of technical business management factors vs price-related factors.
- Need for a Formal Source Selection Plan.

Formal Source Selection

FAR 15.612

For formal source selection, most agencies have established detailed source evaluation and selection procedures. Generally, these procedures prescribe:

- Establishment of a group to evaluate proposals.
- Naming of a Source Selection Authority who might be the CO, the requiring activity manager, or a higher level agency official, depending on the size and importance of the acquisition.
- Preparation of a written source selection plan.

Several agencies have developed alternative source selection procedures which will be reflected in the source selection plan and which depart materially from the process generally prescribed for competitive negotiations in Subpart 15.6 of the FAR.

Formal source selection plans are designed to:

- Maximize competition.
- Minimize the complexity of the solicitation, evaluation, and selection decision.
- Ensure impartial and comprehensive evaluation of proposals.
- Ensure selection of the source whose proposal is the most realistic and whose performance is expected to best meet the requirements.

However, the majority of procurements use informal procedures, and the CO is the source selection official. Even so, if any factors in addition to price are to be used, they must be stated in the solicitation and used in selecting the awardee.



CHAPTER 7

SOLICITATION AND AWARD PHASE

SOLICITATION - AWARD PHASE			
SOLICITATION	EVALUATION Sealed Bidding Negotiation		AWARD
Terms and Conditions Contract Types Letter Contracts Contract Financing Use of Government Property And Supply Sources Need For Bonds Solicitation Preparation Soliciting Offers Publicizing Proposed Procurements Preaward Inquiries Prebid/Preproposal Conferences Amending Solicitations Cancelling Solicitations	Bid Evaluation Processing Bids Time Extensions For Bids Late Offers Bid Prices Responsiveness	Proposal Evaluation Processing Proposals Technical Evaluation Price Objectives Cost and Pricing Data Audits Cost Analysis Evaluating Other Terms & Conditions Competitive Range Discussions Factfinding Negotiation Strategy Conducting Negotiations	Selection for Award Mistakes In Offers Responsibility Subcontracting Goals Preparing Awards Executing Awards Award Debriefing Protests Protests Fraud Fraud And Exclusion

Exhibit 7-1. Solicitation and Award Phase of the Federal Acquisition Process.

Learning Objectives

The learning objectives for this chapter are located at the front of the section or subsection to which they apply and are highlighted with grey shading. After completion of this chapter, you will be expected to know all the highlighted learning objectives for this chapter.

Exhibit 7-2. Learning Objectives.

CHAPTER INTRODUCTION

In the Solicitation and Award Phase, the Government solicits offers, evaluates bids and proposals, and awards contracts.

7.1 SOLICITATION

SOLICITATION - AWARD PHASE			
SOLICITATION	EVALUATION		AWARD
	Sealed Bidding	Negotiation	
Terms and Conditions			
Contract Types			
Letter Contracts			
Contract Financing			
Use of Government Property And Supply Sources			
Need For Bonds			
Solicitation Preparation			
Soliciting Offers			
Publicizing Proposed Procurements			
Preaward Inquiries			
Prebid/Preproposal Conferences			
Amending Solicitations			
Cancelling Solicitations			

Exhibit 7-3. The Solicitation. (The First Function of the Solicitation-Award Phase).

- Define solicitation, contract clause, and solicitation provision.
- List the steps in soliciting offers.

Solicitations	<p>Solicitations consist of (a) a draft contract and (b) solicitation provisions. The draft contract includes a “Schedule” —which describes the requirement—and Contract Clauses.</p> <p>Both an Invitation for Bids (IFB) and a Request for Proposals (RFP) are solicitation documents. IFBs are used when contracting by the sealed bidding method. RFPs are used when contracting by the negotiation method.</p>
Contract Clauses	Contract clauses state the rights and obligations of parties to the contract following award.
Solicitation Provisions	Solicitation provisions tell offerors how to prepare and submit offers. Solicitation provisions also describe the evaluation of offers and the offeror's right to protest award. Provisions are not included in the resulting contract.
Steps in Soliciting Offers	<p>There are two steps in soliciting offers.</p> <ol style="list-style-type: none"> 1. Selecting terms and conditions for the solicitation. In this text/reference, sections 7.1.1.1 through 7.1.1.5 identify some of the clauses and provisions that COs consider for solicitations—namely, those relating to: <ul style="list-style-type: none"> • Contract types • Letter contracts • Contract financing • Use of Government property and supply sources • Bonds 2. Soliciting offers, including: <ul style="list-style-type: none"> • Publicizing the requirement. • Answering inquiries about the requirement. • Conducting prebid/preproposal conferences. • Determining whether to amend or cancel the solicitation.

7.1.1 Terms and Conditions

7.1.1.1 Contract Types

FAR Part 16

- List the differences between fixed-price contracts and cost reimbursement contracts.
- State how the type of contract affects risk.

Types of Contracts

From the contractors' perspective, compensation is perhaps the most important part of a contract. Most Federal contracts are Fixed Price. That is, the contract stipulates a fixed sum of money to be paid the contractor as consideration for performance. Other contracts are Cost Reimbursable. That is, the Government reimburses the contractor for the allowable costs of performance as or after they are incurred. In practice, COs use almost every conceivable variation on these two basic approaches to compensating contractors, including:

- Firm Fixed Price contracts.
- Fixed Price contracts with Economic Price Adjustment.
- Fixed Price Award Fee contracts.
- Fixed Price Redeterminable contracts.
- Fixed Price Incentive contracts.
- Cost Plus Fixed Fee contracts.
- Cost Plus Incentive Fee contracts.
- Cost Plus Award Fee contracts.
- Cost and Cost Sharing contracts.
- Time and Materials and Labor Hour contracts.
- Combinations of two or more of the above compensation arrangements in the same contract.

Beyond compensation, another issue is when, where, and in what quantity the Government may order deliverables under the contract. Most Federal supply contracts specify fixed quantities, delivery points, and delivery dates. However, COs also employ a variety of Indefinite Delivery contracts when the Government needs flexibility in ordering after award.

These contract types are described in Exhibit 7-4. For each type of contract, Exhibit 7-4 also identifies (1) the principal risk that it has been designed to mitigate, and (2) limitations in the FAR on its use.

Selecting a Contract Type

COs solicit Firm Fixed Price offers when the risks involved are minimal or improbable. Otherwise, the CO will seek an agreement with an offeror on a contract type and price (or estimated cost and fee) that will result in a reasonable level of risk while providing the firm with the greatest incentive for efficient and economical performance. To select a contract type, the CO must therefore (1) analyze risks inherent in the acquisition, (2) identify the type of contract that would best mitigate the risk or risks at issue, and (3) ascertain whether that contract type would be proper under the circumstances, given any limitations on its use.

In performing those steps, COs consider such factors as the:

- Extent of competition for the requirement.
- Willingness of offerors to compete on a fixed price basis.
- Degree of uncertainty in estimating each element of cost.
- Type and complexity of the requirement.
- Urgency of the requirement.
- Period of performance or length of production run.
- The contractor's technical and financial capability to perform.
- Adequacy of the contractor's accounting system.
- The impact of concurrent contracts on the risks of performing the proposed work.
- Extent and nature of proposed subcontracting.
- Potential impact on the rights and obligations of the contracting parties.

Clauses and Provisions

When sealed bidding is the method of procurement, the CO may solicit bids based on one of two compensation arrangements: (1) Firm Fixed Price (FFP) or (2) Fixed Price with Economic Price Adjustment (FPEPA). The CO may also solicit any type of ordering arrangement. Having chosen the type of contract to solicit, the CO selects or develops the related clauses (e.g., 52.216-18 through 216-22 for indefinite delivery; and 52.232-1 for fixed price payments) and solicits firm bids against those clauses.

When the selected method is negotiation, the CO may solicit any type of contract. Using the clause at FAR 52.216-1, the CO informs offerors that the Government contemplates award of the specified type of contract. The CO also incorporates the clauses in the solicitation that are entailed by the type of contract being solicited. However, offerors may propose use of a different type of contract.

CONTRACT TYPES

CONTRACT FEATURES

	FIRM FIXED PRICE (FFP)	INDEFINITE DELIVERY (ID)	FIXED PRICE ECON. PRICE ADJUSTMENT (FPEPA)	FIXED PRICE AWARD FEE (FPAF)	FP PROSPECTIVE RE-DETERMINABLE (FPPRD)
PRINCIPAL RISK TO BE MITIGATED	None. Costs can be estimated with a high degree of confidence. Thus, the contractor assumes the risk.	At the time of award, delivery requirements are not certain. Use: <ul style="list-style-type: none"> Definite Quantity (if the required quantity is known and funded at the time of award). Indefinite Quantity (if the minimum quantity required is known and funded at award.) Requirements (if no commitment on quantity is possible at award.) 	Market prices for required labor and/or materials are likely to be highly unstable over the life of contract.	Acceptance criteria are inherently judgmental, with a corresponding risk that the end user will not be fully satisfied.	Costs of performance can be estimated with confidence only for the first year of performance.
USE WHEN	<ul style="list-style-type: none"> The requirement is well-defined. Contractors are experienced in meeting it. Market conditions are stable. Financial risks are otherwise insignificant. 		The market prices at risk are severable and significant. The risk stems from industry-wide contingencies beyond the contractor's control. The dollars at risk outweigh the administrative burdens of an FPEPA.	Judgmental standards can be fairly applied by an Award Fee panel. The potential fee is large enough to both: <ul style="list-style-type: none"> Provide a meaningful incentive. Justify the administrative burdens of an FPAF. 	The Government needs a firm commitment from the contractor to deliver the supplies or services during subsequent years. The dollars at risk outweigh the administrative burdens of an FPPRD.
ELEMENTS	A firm fixed price for each line item or one or more groupings of line items.	<ul style="list-style-type: none"> "Per unit" price. Performance period. Ordering activities and delivery points. Maximum or minimum limit (if any) on each order. Extent of each party's commitment on quantity. 	A fixed price, ceiling on upward adjustment, and a formula for adjusting the price up or down based on: <ul style="list-style-type: none"> Established prices. Actual costs of the labor or materials. Labor or material indices. 	<ul style="list-style-type: none"> A firm fixed price. Standards for evaluating performance. Procedures for calculating a "fee" based on performance against the standards. 	<ul style="list-style-type: none"> Fixed price for the first period. Proposed subsequent periods (at least 12 months apart). Timetable for pricing the next period(s).
THE CONTRACTOR MUST	Provide an acceptable deliverable at the time, place, and price specified in the contract.	Provide acceptable deliverables at the per unit price when and where specified in each order, within the contractual ordering limits.	Provide an acceptable deliverable at the time and place specified in the contract at the adjusted price.	Perform at the time, place, and the price fixed in the contract.	Provide acceptable deliverables at the time and place specified in the contract at the price established for each period.
CONTRACTOR INCENTIVE <i>(other than maximizing Goodwill)¹</i>	Generally makes a dollar of profit for every dollar that costs are reduced.	Generally makes a dollar of profit for every dollar that per unit costs are reduced.	Generally makes a dollar of profit for every dollar that costs are reduced.	Generally makes a dollar of profit for every dollar that costs are reduced; and earn a fee for satisfying the performance standards.	For the period of performance, makes a dollar of profit for every dollar that costs are reduced.
TYPICAL APPLICATION	Commercial supplies and services.	Long term contracts for commercial supplies and support services.	Long term contracts for commercial supplies during a period of high inflation.	Installation support services.	Long term production of spare parts for a major system.
PRINCIPAL LIMITATIONS (IN PARTS 16, 32, 35, AND 52 OF THE FAR)	Generally not appropriate for R&D.	Per unit price may be FFP, FPEPA, FPPRD, or catalog/ market based. If a Req. contract, must buy it from that contractor.	Must be justified.	Must be negotiated.	Must be negotiated. Contractor needs an adequate accounting system. Prompt re-determinations.
VARIANTS	Firm Fixed Price Level of Effort				Retroactive Re-determination

¹The amount of the award fee is not subject to the Disputes Clause.²Goodwill being the value of the name, reputation, location and other intangible assets of a firm.

CONTRACT TYPES

FIXED PRICE INCENTIVE (FPI)	COST PLUS FIXED FEE (CPFF)	COST PLUS INCENTIVE FEE (CPIF)	COST PLUS AWARD FEE (CPAF)	COST OR COST SHARING (C/CS)	TIME & MATERIALS (T&M)
Labor or material requirements for the work are moderately uncertain. Hence, the Government assumes part of the risk.	Labor hours, labor mix, and/or material requirements (among other things) necessary to perform are highly uncertain and speculative. Hence, the Government assumes the risks inherent in the contract—benefiting if the actual cost is lower than the expected cost; losing if the work cannot be completed within the expected cost of performance. Some cost type contracts include procedures for raising or lowering the fee as an incentive for the contractor to perform at lower cost and/or attain performance goals.				
A ceiling price can be established that covers the most probable risks inherent in the nature of the work. The proposed profit sharing formula would motivate the contractor to control costs and meet other objectives.	Relating fee to performance (e.g., to actual costs) would be unworkable or of marginal utility.	An objective relationship can be established between the fee and such measures of performance as actual costs, delivery dates, performance benchmarks, and the like.	Objective incentive targets are not feasible for critical aspects of performance. Judgmental standards can be fairly applied. ¹ The potential fee would provide a meaningful incentive.	<ul style="list-style-type: none"> The contractor expects substantial compensating benefits for absorbing part of the costs and/or foregoing fee, or The vendor is a nonprofit entity. 	Costs are too low to justify an audit of the contractor's indirect expenses.
<ul style="list-style-type: none"> A ceiling price. Target cost. Target profit. Delivery, quality, and/or other performance targets (optional) A profit sharing formula. 	<ul style="list-style-type: none"> Target cost. A fixed fee. 	<ul style="list-style-type: none"> Target cost. Performance targets (optional) A minimum, maximum, and target fee. A formula for adjusting fee based on actual costs and/or performance. 	<ul style="list-style-type: none"> Target cost. Standards for evaluating performance. A base and maximum fee. Procedures for adjusting "fee", based on performance against standards. 	<ul style="list-style-type: none"> Target cost. If CS, an agreement on the Government's share of the cost. No fee. 	<ul style="list-style-type: none"> A ceiling price. A per hour labor rate that also covers overhead and profit. Provisions for reimbursing direct material costs.
Provide an acceptable deliverable at the time and place specified in the contract at or below the ceiling price.	Make a good faith effort to meet the Government's needs within the estimated cost in the Schedule.				Make a good faith effort to meet the Government's needs within the "ceiling price."
Realizes a higher profit by completing the work below the ceiling price and/or by meeting objective performance targets.	Realizes a higher rate of return (i.e., fee divided by total cost) as total cost decreases.	Realizes a higher fee by completing the work at a lower cost and/or by meeting other objective performance targets.	Realizes a higher fee by meeting judgmental performance standards.	If CS, shares in the cost of providing a deliverable of mutual benefit.	
Production of a major system based on a prototype.	Research study.	Research and development of the prototype for a major system.	Large scale research study.	Joint research with educational institutions.	Emergency repairs to heating plants and aircraft engines.
Must be justified & negotiated. Contractor needs an adequate accounting system. Targets must be supported by cost data.	Must be negotiated. Must be justified. The contractor must have an adequate accounting system. The Government must closely monitor the contractor's work to ensure use of efficient methods and cost controls. There are statutory and regulatory limits on the fees that may be negotiated. Must include the applicable "Limitation of Cost" clause at FAR 52.232-20 through 23.				Must be justified and negotiated. The Government must closely monitor the contractor's work.
Firm or Successive Targets	Completion or Term				Labor Hour

Exhibit 7-4. Contract Types.

Agreements are not contracts but are negotiated instruments for use during a set period of time between a contracting activity and a contractor. There are two types of Agreements, shown in exhibit 7-5 below.

TYPES OF AGREEMENTS

- **Basic Agreement (BA)** constitutes an understanding that certain contract clauses will be included in future contracts. Useful when a number of contracts may be awarded to a contractor and agreement can be reached on a number of critical terms and conditions for incorporation in most or all of the impending contracts.
- **Basic Ordering Agreements (BOA)** include negotiated clauses, but also describe the types of supplies or services to be acquired and the methods for pricing, issuing, and delivering future contracts (called “orders” for the purpose of a BOA). By establishing the “ground rules,” the placing of contracts for supplies and services may be expedited as anticipated requirements for the supplies and services materialize.

Exhibit 7-5. Types of Agreements.

What Type of Contract for Building a House?

After the Livingston’s decided to go ahead with their “plan”, they had to determine the type of contract to use. Because the architect would prepare detailed plans, thus eliminating uncertainties as to the work to be performed, a fixed price type of contract seemed appropriate:

- *They considered using an incentive provision that would reward the builder for early completion but felt that the planned delivery schedule was realistic and the builder should have no trouble meeting it.*
- *A labor-hour contract was ruled out because they did not want to have to acquire and furnish building materials to the builder.*
- *They ruled out a time-and-materials type of contract because that would not require the builder to complete the work within a fixed amount of time—besides, the work to be done was clearly described.*

Their final decision was to use a firm-fixed-price type contract. That way, they limit their liability because the builder must complete the work for the agreed upon price.

7.1.1.2 Letter Contracts

FAR 16.603

- Define the term letter contract.
- Identify situations when a letter contract is appropriate.

Definition

A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin work immediately.

When Appropriate

A letter contract may be used when:

- The Government's needs are such that the contractor must be given a binding commitment so that work can begin immediately.
- Negotiation of a definitive contract is not possible in time to meet the requirement.

Clearly, making a contractual commitment before all the terms and conditions are known can pose some risks. Nevertheless, there are occasions, such as during national emergencies, when time is of the essence and a letter contract is therefore necessary.

A letter contract:

- May not be used unless the agency head or designee determines that no other contract is suitable.
- Shall not be entered into without competition if competition is otherwise required.

Clauses and Provisions

When it is necessary to use a letter contract, it should:

- Be as complete and definite as possible under the circumstances.
- Include a maximum liability clause.
- Include a time-table for definitization (usually within 180 days or before completion of 40 percent of the work).
- If awarded based on price competition, include an overall ceiling price to avoid being a "blank check."

7.1.1.3 Contract Financing

FAR Part 32

- Identify situations when solicitations may provide for contract financing.
- List the types of financing.
- Determine whether to provide for contract financing when requested to do so by an offeror.

Financing Defined

Financing refers to payments made to a contractor before supplies have been delivered or services rendered. The CO determines whether financing is necessary. The CO also decides what type or types of contract financing will be specified in the solicitation document.

When Appropriate

The contractor's private financing, such as using company funds or borrowed capital, may be inadequate or be so costly as to be unaffordable. Therefore, contractors may need financing to cover upfront expenses for:

- Materials and equipment.
- Labor.
- Subcontracts.
- Overhead expenses.
- Travel and per diem.

The longer the term of the contract, the more the contractor will be concerned about its ability to maintain the necessary cash flow during contract performance. To help with this cash flow problem, and as a means of attracting contractors, the Government assists contractors with their financing. Methods of financing are listed below in the order of preference (with customary progress payments being by far the most commonly used method).

Types of Financing

1. **Customary Progress Payments**—Payments made under a fixed price contract on the basis of costs incurred or on physical progress. When based on costs, the customary rate of payment is usually 80% of costs incurred or, for small businesses, 85%. For construction, the rate is usually 90% for work completed.

Note that progress payments differ from "partial payments," in that the latter are payments for items received and accepted by the Government when the contractor has shipped part of the order. Progress payments, on the other hand, are made to the contractor for work still in progress.

2. **Loan Guarantees**—Generally, a guarantee to a lending institution that the Government will stand behind loans to the contractor. Seven agencies (DOD, Energy, Commerce, Interior, Agriculture, GSA, NASA) are authorized to guarantee loans for contract performance.
3. **Unusual Progress Payments**—Generally, payments at a rate higher than 80% of costs incurred (or higher than 85% for small business concerns).
4. **Advance Payments**—Payments made to the contractor in advance of any incurrence of cost. Advance payments are used rarely (i.e., when start-up costs for commencing work are exceptionally large).

Clauses and Provisions If progress payments are to be made available, the CO incorporates the provision at FAR 52.232-13. In sealed bidding, the progress payments may be made available only for small businesses, by incorporating the provision at FAR 52.232-14, or may be ruled out altogether by the provision at FAR 52.232-15. If progress payments are to be available, the CO also incorporates the progress payment clause at FAR 52.232-16. For advance payments, the CO inserts the clause at FAR 52.232-12.

Requests from Offerors When the solicitation makes progress payments available, the offeror may request the progress payments following award in sealed bidding. In negotiated procurements, the contractor can request progress payments (or any other form of financing) during discussions whether or not the CO incorporated the provision at FAR 52.232-13. In that case, the CO evaluates the firm's need for financing and reaches a decision on the request. If financing is extended, the CO takes measures to protect the Government's interests and receive consideration for the cost of the capital being furnished.

7.1.1.4 Use of Government Property

- Identify types of GFP.
- State reasons for making GFP available to contractors.

Government Furnished Property

FAR Part 45

Contractors are ordinarily expected to furnish all property necessary to perform the work of the contract. When in the Government's best interests, however, the CO can authorize a contractor to use Government-Furnished Property (GFP). For example:

- The Government may be the only source of supply for an item that is to be used in connection with contract performance (e.g., certain nuclear products), or

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- The cost of furnishing Government property to a contractor may be less than having the contractor furnish it.

Examples of GFP that may be provided are:

- Facilities.
- Material.
- Motor Vehicles.
- Special Tooling.
- Special Test Equipment.

In some cases, the CO may authorize contractors to acquire property for the Government. While the contractors will use this property in performing the work of the contract, title to such property ultimately passes to and is vested in the Government.

Clauses and Provisions

When property is to be furnished, describe the property in the Schedule or specifications and incorporate the clauses prescribed in FAR Part 45. The CO may also solicit offers predicated either on use of Government property or on the use of equivalent contractor-furnished property—as one way of deciding whether the Government would incur a lower or higher total cost by furnishing property for the work.

Supply Sources

In addition to furnishing GFP, the CO may, if it is in the Government's interest, authorize contractors to use:

- Interagency motor pool vehicles (and related services).
- Government supply sources, such as:
 - Stocks maintained by certain agencies (e.g. helium from the Department of the Interior).
 - Federal supply schedules (e.g., GSA indefinite-delivery contracts).

Generally, the use of government supply sources and an interagency motor pool is limited to cost reimbursement contracts.

7.1.1.5 Bonds

FAR Part 28

- Define the term bond.
- Describe the different types of bonds.
- Identify situations in which a bond is needed.
- Explain the impact of not requiring a bond.

TYPES OF BONDS			
	Bid Guarantee	Performance Bond	Payment Bond
Purpose	Ensures bidder will: - Not withdraw bid. - Execute contract. - Furnish additional bonds required.	Secures performance and fulfillment of the contractor's obligation under the contract.	Assures payment as required by law to all persons supplying labor or materials to the prime contractor.
Value	20% of the bid price but not more than \$3 million	100% of contract.	Varies.
When Required	When performance bonds, or performance and payment bonds, are required.	For construction contracts in U.S. over \$25,000. In other than construction contracts, when deemed necessary by the CO to protect the Government from undue market risks.	For construction contracts in U.S. over \$25,000. In other than construction contracts, when a performance bond is required and the CO believes a payment bond is also necessary.
Examples of Risks That Bonds Are Meant To Mitigate		That the Contractor might not complete work.	That the Contractor might fail to pay subcontractors.

*Exhibit 7-6. Types of Bonds.***Definition**

A **bond** is a written instrument executed by a bidder or contractor and a surety to assure fulfillment of an obligation to the Government. The most commonly used types of bonds are shown in Exhibit 7-6. The FAR also provides for advance payment and patent infringement bonds.

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Clauses and Provisions Incorporate the clauses prescribed in FAR Part 28 and the applicable forms (e.g., SF 25). Also specify:

- The requirement for the bond(s);
- The penal sum of each bond; and
- The deadline for submitting acceptable bonds.

7.1.1.6 Solicitation

- Identify two types of solicitation formats.
- Identify the elements of the solicitation document.

Format

FAR 14.201 & 15.406

After deciding such business-related issues as the type of contract and the need for bonds, COs assemble the IFB or RFP. IFBs and RFPs have four basic parts:

- Contract Schedule (i.e., the requirement).
- Contract Clauses.
- List of Documents and Attachments.
- Representations and Instructions (i.e., solicitation provisions).

COs generally follow the Uniform Contract Format (Exhibit 7-7) in assembling the solicitation document.

A simplified format is available for Firm Fixed Price and Fixed Price-Economic Price Adjustment contracts. This format substitutes the SF 1447 for the SF 33 and streamlines the Schedule.

Selecting Clauses and Provisions

FAR Part 52

Federal solicitations generally contain hundreds of provisions and clauses. For the most part, these are drawn from standard clauses and provisions in FAR Part 52, the agency's supplemental regulations, the activity's "clause book", and other such sources. Several FAR clauses and provisions must appear in all Federal solicitations (i.e., "boilerplate"). Others, generally classified as "required when applicable" or "optional", result from the CO's decisions on such matters as the:

- Method of procurement.
- Type of requirement (e.g., supply, service, construction, etc.).
- Type of contract to solicit.

To identify applicable FAR clauses and provisions, COs turn to the "Solicitation Provisions and Contract Clauses Matrix" in section 52.3 of the FAR.

UNIFORM CONTRACT FORMAT

FAR 14.201 and 15.406

Section	Title	Examples or Purpose of Section
Part 1 - Schedule		
A	Solicitation/Contract Form	The first page of the solicitation, (e.g., SF 33), with general instructions on when and where to submit offers and blocks for the offeror's name and address.
B	Supplies or Services and Prices	Lists the supplies or services being acquired by line item and quantity, with blocks for offerors to fill in prices.
C	Description/Specifications/Work Statement	Supplements the brief description in Section B to fully describe the supplies or services to be acquired.
D	Packaging and Marking	Specifies how the item must be packaged, packed, preserved, and/or marked, as appropriate.
E	Inspection and Acceptance	Specifies when, where, and how the deliverable will be inspected and accepted, as well as the contractor's obligations for quality assurance.
F	Deliveries or Performance	Specifies when, where, and how the item(s) must be delivered, or when and where the services must be rendered.
G	Contract Administration Data	Used for accounting and appropriation data and for additional contract administration information or instructions, such as the name and location of the Government activity that will (1) administer the contract and (2) make payments under the contract.
H	Special Contract Requirements	Used for requirements that occur on a contract-by-contract basis (e.g., special security requirements pertaining to classified materials).

Exhibit 7-7. Uniform Contract Format.

UNIFORM CONTRACT FORMAT		
Section	Title	Examples or Purpose of Section
Part II - Contract Clauses		
I	Contract Clauses	Includes or references most clauses that will apply to work under the contract, including such matters as contract execution and interpretation, bonds, type of contract, set asides, subcontracting, foreign sourcing, labor management relations, environmental protection and occupational safety, patents and rights in data, payment, taxes, property, warranties, modifications, termination, and disputes.
Part III - List of Attachments		
J	List of Documents, Exhibits, or other attachments	The CO lists the title, date, and page count for any attachments.
Part IV - Representations and Instructions		
K	Representations, Certifications, and Other Statements of Offerors	Used for obtaining certifications (e.g., of Independent Price Determination, Nonsegregated Facilities, Buy American, Clean Air and Water, Drug-Free Workplace, etc.), representations, and other data from the offerors.
L	Instructions, Conditions, and Notices to Offerors	Used to instruct offerors on preparing and submitting the offers, including such matters as bid samples, descriptive literature, amendments, late submissions, failure to submit, and the like. Also used to notify offerors on such matters as preaward inquiries, award, and service of protests.
M	Evaluation for Award	Tells prospective offerors how offers will be evaluated (e.g., price-related and technical factors).

Exhibit 7-7. Uniform Contract Format (Continued).

7.1.2 Soliciting Offers

7.1.2.1 Publicizing Proposed Procurements

- Describe CBD synopses.
- Describe other methods of publicizing.

Purpose

COs are required to publicize proposed contract actions prior to issuance of the solicitation to:

FAR Part 5

- Increase competition.
- Broaden industry participation in meeting Government requirements.
- Assist small, small disadvantaged, and labor surplus area concerns in obtaining contracts and subcontracts.

Synopsizing

The generally prescribed and most common way to publicize is the placement of a synopsis in the **Commerce Business Daily (CBD)**. A synopsis is a brief description of the supplies and services to be acquired by contract. It also provides prospective offerors with information on obtaining a copy of the IFB or RFP from the responsible contracting office. Generally, the requirement must appear in the CBD at least 15 days before the CO releases the IFB or RFP to prospective offerors.

The CBD is the public medium for announcing proposed contract actions, contract awards, and other procurement information. The CBD is issued every business day by the Department of Commerce. Each edition contains approximately 500 to 1,000 synopses and other notices.

Exceptions to the Synopsis Requirement

CBD synopses are only required for contract actions expected to exceed the small purchase dollar threshold. The FAR also establishes exceptions to the synopsis requirement. For instance, the FAR provides relief from the synopsis requirement when:

- The requirement is classified.
- Time does not permit the delays inherent in synopsizing.
- Ordering against a requirements contracts.
- Exercising an option.

Section 5.202 of the FAR also establishes other exceptions to the synopsis requirement. To determine whether an exception applies to a given contract action, see that section of the FAR.

COs further “publicize” the requirement by sending copies of the IFB or RFP to potential offerors on their mailing lists. Where necessary to expand competition, COs may employ the methods in Exhibit 7-8.

OTHER METHODS OF PUBLICIZING

- Posting solicitation notices in public places (required when the award price is expected to range between \$10,000 and \$25,000 or, in the case of Defense agencies, between \$5,000 and \$25,000).
- Periodic handouts listing proposed contracts.
- Announcements to local trade associations.
- Announcements to newspapers and other media for publication without cost (paid advertising requires special authority and is seldom used).
- Electronic bulletin boards.
- Mailing of flyers to potential suppliers listed on the Bidder’s Mailing List.

Exhibit 7-8. Other Methods of Publicizing.

Generally, COs must allow offerors at least 30 days to prepare and submit offers from the day on which the IFB or RFP was issued. Thus, when a synopsis is required, COs allot at least 45 days for soliciting offers from the day on which the synopsis was published in the CBD.

COMPETITION

After deciding upon terms and conditions for the work as the basis for soliciting offers, the Livingstons had to answer the question “How do we solicit bids on our work from reputable builders?” To solicit interest in their work, the Livingstons:

- *Placed ads in a local newspaper.*
- *Called builders in telephone directories.*
- *Provided fliers to wholesale building supply outlets.*

Six offerors contacted the Livingstons and requested more information on the work. In response to these requests, the Livingstons mailed a copy of their specifications and a printout of other desired terms and conditions of the work. The Livingstons invited each respondent to mail back a written offer.

Similarly, when seeking offerors to meet Government requirements, you prepare an IFB or RFP and invite companies to submit offers. Unlike the Livingstons, who only solicited offers from area builders, you are generally required to publicize your requirement and solicit offers from all interested offerors.

7.1.2.2 Preaward Inquiries

FAR 14.211

- Define preaward inquiry.
- Describe what may be disclosed.
- Explain how responses to preaward inquiries impact on the procurement process.

Definition Preaward inquiries are questions and comments from prospective offerors about specifications, terms, and/or conditions in the solicitation.

What May Be Disclosed General information not prejudicial to other offerors (i.e. not giving one offeror an unfair advantage over any other offeror) may be furnished upon request. For example:

- Explanation of the meaning of a clause.
- Directions for locating a facility.

You can avoid most inquiries by ensuring the solicitation document is complete, clear, and unambiguous.

Potential Impact Refer all inquiries to the CO to avoid situations that might be viewed as improper disclosure. Technical or other information may be transmitted only by the CO or others having contractual authority. The improper release of information may result in a protest (see Section 7.4.3) that could delay or void the entire procurement.

7.1.2.3 Prebid and Preproposal Confer- ences

- Define prebid/preproposal conference.
- Explain when one is necessary.

Definition A prebid/preproposal conference is a meeting held before bid opening or before the closing date for submission of proposals. The CO or designated representative conducts the conference.

When Necessary The purpose of the prebid/preproposal conference is to:

- Provide for inspection of work site or GFP.
- Explain complicated specifications and requirements.
- Explain revisions to requirements.
- Address numerous offeror inquiries.

FAR 14.207 & 15.409

Remarks or explanations made at a conference should not be construed as amending the written solicitation.

Conferences are not a substitute for amending defective or ambiguous specifications. Sometimes, however, conferences result in the issuance of a clarifying or correcting amendment to the solicitation.

7.1.2.4 Amending Solicitations

FAR 14.208 & 15.410

- List examples of when amending a solicitation may be necessary.
- Describe how solicitations are amended.

When to Amend

The CO shall amend a solicitation if it is necessary to:

- Change quantity requirements, specifications, delivery requirements, or the due date for offers.
- Correct or clarify an ambiguous or defective solicitation.

Amendments are not appropriate when the overall scope of the proposed contract action has changed to the extent that the original synopsis and/or solicitation no longer validly describes the requirement. In such cases, the solicitation should generally be cancelled per section 7.1.2.5 below.

If a solicitation is amended, the CO determines if the due date for submitting offers also needs to be changed and so indicates in the amendment.

How Solicitations are Amended

Amendments are prepared on Standard Form 30. With respect to IFBs, a copy of the amendment must be sent to all bidders who were provided a copy of the IFB. With respect to RFPs, a copy of the amendment must be sent:

- If before the closing date, to all offerors provided a copy of the RFP.
- If after the closing date, to all responding offerors.
- If after the competitive range has been established, to all offerors in the range.

7.1.2.5 Cancelling Solicitations

FAR 14.209, 14.404-1, and 15.606

- List examples of when it may be necessary to cancel a solicitation.
- Identify who is responsible for the decision to cancel.

When to Cancel

Solicitations should not be cancelled unless it is clearly necessary, in the public's interest, and accomplished in accordance with agency regulations. However solicitations may be cancelled for such reasons as:

- The requirement no longer exists.
- Funds are no longer available.

A solicitation might be cancelled and resolicited if the overall scope of the proposed contract has changed to the extent that the original synopsis and/or solicitation no longer validly describes the requirement.

Cancelling IFBs Before Opening

When the CO decides to cancel an IFB before bid opening, follow the steps in Exhibit 7-9.

CANCELLING IFBs BEFORE OPENING

FAR 14.209

- Return unopened bids.
- Send a cancellation notice to all prospective bidders, (i.e., those to which the solicitation was sent).
- Briefly explain in the cancellation notice why the solicitation was cancelled.
- Consider placing a cancellation notice in the CBD.
- Record cancellation.

Exhibit 7-9. Cancelling Solicitations.

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Cancelling IFBs After Opening

FAR 14.404-1

CO's may cancel IFBs after opening the bids for reasons such as the following:

1. All otherwise acceptable bids are at unreasonable prices.
2. Only one bid was received and the Government cannot determine the reasonableness of the price bid.
3. No responsive bid has been received from a responsible bidder.
4. Bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
5. Inadequate or ambiguous specifications were cited in the IFB.
6. Specifications have been revised.
7. The supplies or services are no longer required.
8. The IFB did not provide for consideration of all factors of cost to the Government, such as the cost of transporting Government furnished property to bidder's plants.
9. Bids indicate that the requirement can be satisfied by a different, less expensive deliverable than solicited.
10. A cost comparison as prescribed in OMB Circular A-76 shows that performance by the Government is more economical.
11. The requirements of FAR 10.008 on the availability and identification of specifications have not been met.
12. Cancellation is clearly in the public interest for other reasons.

The steps in cancellation are roughly the same as in Exhibit 7-9, save that the bids have already been opened and that notice need be sent only to those firms that submitted bids. After cancelling, the CO has three options:

- Obtain authority to negotiate with each responsible bidder (but only if the IFB was cancelled for one of the first four reasons above).
- Resolicit.
- Forego the requirement or meet it in-house.

Cancelling RFPs

FAR 15.606

RFPs are cancelled and resolicited whenever the Government's requirement has changed so substantially that it warrants a complete revision of the solicitation.

7.2 EVALUATION (SEALED BIDDING)

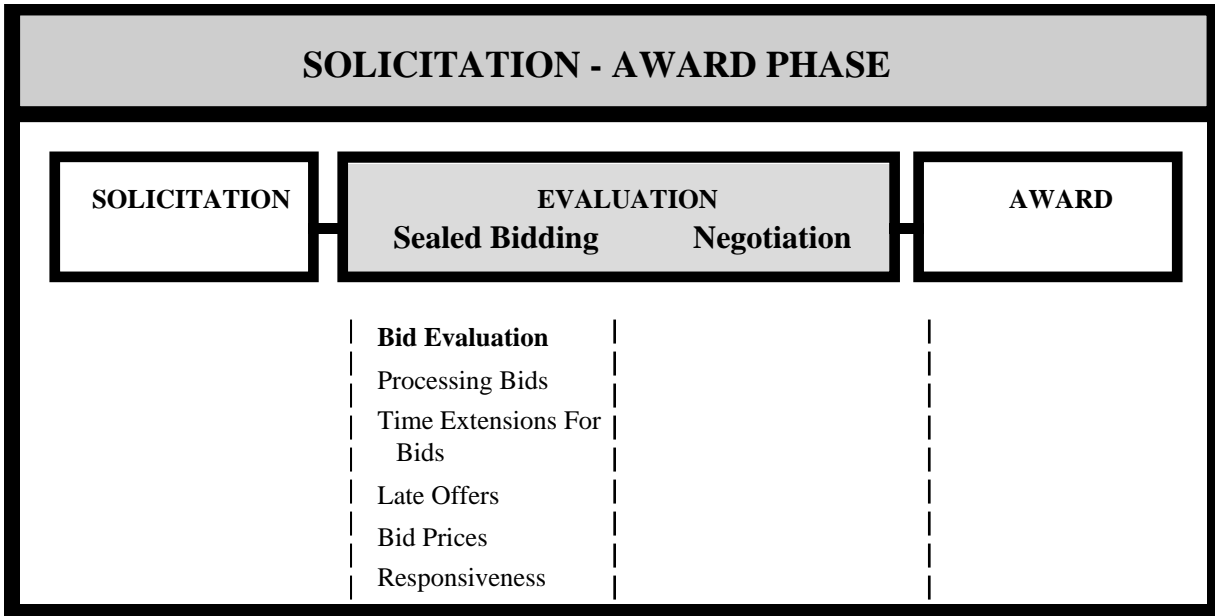


Exhibit 7-10. Evaluation (Sealed Bidding) (The Second Function of the Solicitation-Award Phase).

FAR Part 14

Evaluation is the second function in the Solicitation and Award Phase of the procurement process. After offers (bids or proposals) are solicited and received, they are evaluated.

Bids are evaluated differently than proposals. Hence, this section deals with bid evaluation and section 7.3 presents the process for evaluating proposals.

7.2.1 Processing Bids

FAR 14.4

Describe the procedures for:

- Receiving, securing, and controlling bids.
- Opening, and abstracting bids.

The essence of sealed bidding is that sealed bids are publicly opened and award is made to the lowest responsive, responsible bidder. To ensure the integrity of the process, the CO processes bids as described in Exhibit 7-11.

PROCESSING BIDS

- Bids received are not opened until the time set for bid opening.
- Bids are secured in a locked box, to prevent tampering.
- All bids received are accounted for.
- Bids are publicly opened and read by an authorized person at the time set for bid opening.
- Prices bid are properly recorded on an “Abstract of Bids.”
- Copies of bids are available for public viewing.

Exhibit 7-11. Processing Bids.

7.2.2 Time Extensions for Bids

- Define the term bid acceptance period.
- Describe how it affects the award decision.

Definition

A bidder is given the opportunity to specify a date on which his/her bid expires. The time before the bid expires is called the bid acceptance period. The solicitation may establish a minimum acceptance period. Bids offering less than the minimum time are nonresponsive.

Impact on Award Decision

If the Government does not award the contract within the time specified for acceptance of the bid, the bid is no longer valid. If award has been delayed and the bid acceptance period of several of the lowest bids is about to expire, the CO can ask the lowest bidders whose bids have not expired to extend their bid acceptance period. The extensions must be in writing.

Bid Modification or Withdrawal

Bids may be modified or withdrawn by written or telegraphic notice not later than the exact time set for opening. The **“firm bid rule”** prevents a bidder from withdrawing his or her bid between bid opening and the expiration of the bid acceptance period.

7.2.3 Late Bids

FAR 14.304

- Define a late bid.

Bids received after the exact time set for opening of bids in the office designated in the IFB are late bids. Ordinarily, late bids are not accepted. However, there are very specific circumstances under which late bids may be considered for award. These circumstances are:

- The bid was sent by registered or certified mail to a contracting office in the U.S. or Canada no later than five calendar days before the specified bid receipt date. (If the offeror used *U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee*, the bid can be considered if sent not later than 5:00 PM at the place of mailing two working days prior to the specified bid receipt date.)
- The bid was sent by mail (or, if authorized in the IFB, by telegram or via facsimile), and late receipt was due solely to mishandling by the Government after receipt at the Government installation.

These same circumstances also apply to modifying or withdrawing bids.

7.2.4 Bid Prices

- Explain price-related factors and how they may affect the evaluation of a bid.
- Calculate bid prices to determine low, evaluated price for each item or group of items and compare with any “all or none” bids.
- Determine that lowest evaluated price is fair and reasonable.

Applying the Price-related Factors

In sealed bidding, award is made to the low bidder who is also responsive and responsible. Identification of the low bidder is usually based on:

- The price bid.
- Application of the price-related factors.
- Possibility of making award to more than one bidder.

In Chapter 6, Exhibit 6-19 lists commonly applied price related factors. To identify the lowest price bid, the CO now applies each factor to determine the *evaluated* price of the bid. Exhibit 7-12 illustrates the application of one such factor.

APPLYING A PRICE-RELATED FACTOR

Assume the following bids for a freezer.

Bidder	Purchase Price	Energy Cost*	Evaluated Price
A	\$850	\$650	\$1,500
B	\$950	\$450	\$1,400

*Net present value of expected energy costs over the five year specified system life of the freezer.

Exhibit 7-12. Applying a Price-Related Factor.

Calculating the Lowest Price Bid

Contracts may be awarded to more than one bidder when a solicitation contains many “line” items. This can happen when the IFB instructs bidders to submit separate prices for:

- Each line item—for the entire quantity specified in that line item,
- Specified lots of the same line item ("incremental" buys—e.g., when bidders are instructed to submit one price for the first 100 units, a second price for the next 500 units, and a third price for the final 500 units), or
- Specified groupings of line items ("family" buys).

Bidders can qualify their bids (e.g., they can stipulate that they will accept award only for all the items). This kind of bid is called an “all or none” bid. If the "all or none" bid is the lowest for all line items taken as a whole vs. any other combination of bids, award can be made to that bid.

The CO determines which award or combination of awards will be most favorable to the Government. For example, the CO may accept Bidder A’s low bid for line item 1, Bidder B’s low bid for line item 2, etc. A number of mathematical calculations might be performed to identify the most favorable award combinations, as illustrated in Exhibit 7-13.

IDENTIFYING THE LOW BIDDER

To illustrate, assume the following bids:

Bidder	Item 1	Item 2	Total Bid
A	\$40,000	\$50,000	\$90,000
B	\$50,000	\$45,000	\$95,000

Bidder A's bid is the lowest total bid at \$90,000. However, if you award Item 1 to Bidder A and Item 2 to Bidder B, the two awards combined would total only \$85,000. Even after factoring in the additional \$500 cost of administering two contracts instead of one, multiple awards would be the better bet.

Exhibit 7-13. Identifying the Low Bidder.

Fair and Reasonable Prices

A CO may not make an award at any price that he or she does not believe to be “fair and reasonable.” The determination of what constitutes a fair and reasonable price is affected by such considerations as:

- Prices bid in previous procurements for like items, as adjusted for inflation and other such variables.
- Current market prices, conditions, and trends.
- The extent of competition and whether the competitors prepared their bids independently of one another.
- Opportunities for quantity discounts revealed by the bidder's responses to the provision at FAR 52.207-4, Economic Purchase Quantity—Supplies.

As a very general rule, a price is fair and reasonable if it is what a “prudent” person is willing to pay when buying under similar circumstances.

Options when Prices Appear Unreasonable

If the low bid appears unreasonably low, the CO next determines whether there has been a mistake in bid (see section 7.4.1.1). If the low bid appears to be unreasonably high, the CO next determines whether to cancel the IFB (see section 7.1.2.5).

7.2.5 Responsiveness

FAR 14.404-2

- Define responsiveness as it relates to bids.
- List examples of minor informalities and irregularities in bids.

Definition

If a bid fails to conform to the essential requirements of the IFB, it is rejected as nonresponsive.

For example, suppose that an IFB is for 1,000 widgets to be delivered no later than 15 January. Suppose further that the low bidder qualifies his or her bid to show delivery no later than 31 January. Because the delivery date is an essential requirement, the bid is rejected as nonresponsive.

Minor Informalities or Irregularities

A bid that is nonresponsive at the time of bid opening cannot later be made responsive; this prevents a bidder from having “two bites at the apple.” However, if there is a discrepancy that is considered a minor informality or irregularity, the bid can still be considered for award. A minor informality or irregularity is one that is merely a matter of form and not of substance. It is an immaterial defect that can be corrected or waived without being prejudicial to the other bidders.

MINOR INFORMALITIES OR IRREGULARITIES

FAR 14.405

Examples include failure of a bidder to:

- Return the number of copies of signed bids required by the IFB.
- Furnish required information concerning the number of its employees.
- Execute certain required certifications.

Exhibit 7-14. Minor Informalities or Irregularities.

7.3 EVALUATION (NEGOTIATION)

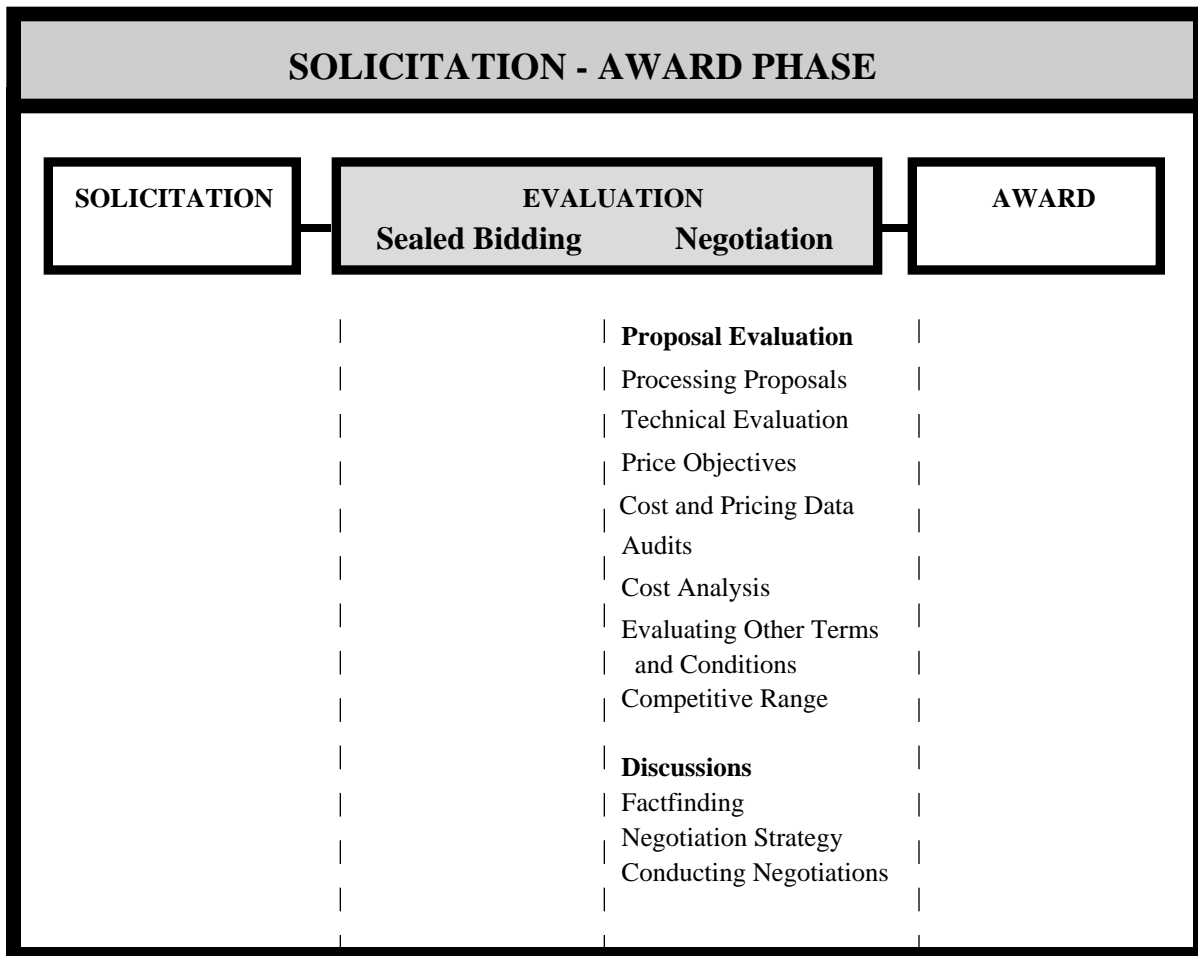


Exhibit 7-15. Evaluation (Negotiation) (The Second Function of the Solicitation-Award Phase).

FAR Part 15

This section addresses evaluating proposals, which is a part of the negotiation method of procurement.

7.3.1 Proposal Evaluation

7.3.1.1 Processing Proposals

FAR 15.411

Describe the following procedures for processing proposals:

- Receiving, securing, and controlling proposals.
- Opening and recording proposals.
- Processing late proposals.
- Comparing proposals with requirements of the RFP.
- Initiating proposal evaluation.

Receipt and Opening

Proposals received before the closing date are secured, unopened, in a locked file. As soon as possible after the due date, the CO privately opens (i.e., not a “public” opening) and records the proposals. Late proposals are processed essentially the same as discussed under sealed bidding (7.2.3).

Initial Review

The CO compares the proposals with the requirements of the RFP to ensure that required information, certifications, etc., have been provided. If a proposal departs in any respect from the terms and conditions of the RFP, such variances must be identified and addressed in factfinding or discussions with the offeror. In some circumstances, the FAR even provides for rejection of a proposal if the offeror is unwilling to comply with provisions and clauses required for the acquisition (e.g., refusal to furnish the contingent fee representation prescribed in FAR 3.405).

Initiating Evaluation

Technical proposals are forwarded to the requiring activity or the technical evaluation team, as provided in the source selection plan. Price proposals are assigned for evaluation to specialists in the contracting office. If field pricing support or audit is required, copies of the proposals will be furnished to the cognizant organizations.

7.3.1.2 Technical Evaluation

- Identify the evaluation factors (technical and price) stated in Section M of the RFP.
- List the Government sources available to assist the technical evaluators during the technical evaluation of a proposal.
- Identify who oversees evaluations to ensure conformance with the RFP, the Source Selection Plan, and the FAR.

SOLICITATION AND AWARD PHASE

What is Evaluated	<p>During the technical evaluation of a proposal, evaluators must take into account the:</p> <ul style="list-style-type: none">• Statement of Work (SOW) and related aspects of the Schedule.• Evaluation factors in Section M of the RFP, along with any special standards of responsibility.• Instructions for proposal preparation in Section L.• Technical characteristics of supplies or services being procured.• Offerors' proposals.
Who Evaluates	<p>The procedures for technical evaluation are contained in the Source Selection Plan, including the names of persons or organizations on the evaluation teams. In addition, the technical evaluators can (through the CO) seek help from other appropriate Government personnel. The technical evaluators analyze the recommendations from these sources and obtain other data necessary for the proposal evaluation.</p>

REASONS FOR THE TECHNICAL EVALUATION

- Ensure understanding of the requirement.
- Establish the competitive range (see section 7.3.1.8).
- Rank proposals on the basis of technical factors and justify the rankings.
- Provide data on the proposed labor mix, hours of direct labor, material mix, material quantities, and the like, to support the CO's analysis of proposed costs (see section 7.3.1.6).
- Identify technical negotiation objectives and the need for factfinding.
- Prepare the agenda for discussions with the offerors.

Exhibit 7-16. Reasons for the Technical Evaluation.

CO's Role	<p>Generally, the CO ensures that the evaluation process conforms with the RFP, the Source Selection Plan, and agency source selection procedures. Sometimes, however, when formal procedures are used, a Source Selection Authority may be appointed and might assume some oversight responsibilities for managing the evaluation process.</p>
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7.3.1.3 Price Objectives

15.8

- Define the term price objective.
- State the issues considered when analyzing price proposals to determine (a) a fair and reasonable price and (b) the Government's price prenegotiation objectives.

Before beginning negotiations with an offeror, the CO establishes a price objective, i.e., the "going-in" or prenegotiation position on price. To establish the Government's position on what constitutes a fair and reasonable price for the procurement, the CO compares proposed prices to such indicators of reasonableness as:

- Prices offered and paid in past procurements for the same or a similar deliverable(s), with adjustments for such factors as inflation.
- Prices offered and currently being paid in other procurements.
- Rough "yardsticks" (such as dollars per pound).
- Published price lists, published market prices, and price indices.
- Independent Government estimates of cost and value.

When the CO does not have sufficient data to evaluate the overall proposed price, the CO may need to analyze the individual elements of cost that comprise the proposed price. This may entail:

- Obtaining cost and pricing data (see Section 7.3.1.4).
- Auditing the cost data (see Section 7.3.1.5).
- Developing a prenegotiation position on each significant proposed element of cost (see Section 7.3.1.6).

7.3.1.4 Cost and Pricing Data

- Describe cost and pricing data
- List conditions under which the firm must certify the data.
- Identify the circumstances that determine if an offeror is exempt from submitting cost and pricing data.

Obtaining Data

15.804-6(a)

To obtain a cost breakdown, the contracting officer must specify:

- Whether **complete** cost or pricing data must be provided (i.e., "all facts as of the date of price agreement that prudent buyers or sellers would reasonably expect to affect price negotiations significantly"),

- What data must be provided if complete data are not necessary,
- The form in which the data must be submitted, and
- Whether the data must be certified.

COST AND PRICING CERTIFICATES FAR 15.804	
Required When:	Unless The Award Price Is Based On:
A negotiated contract action exceeds \$100,000* (however, a CO may request it at lower dollar levels), OR A modification to a sealed bid or negotiated contract involves a price adjustment that is expected to exceed \$100,000.*	"Adequate" price competition OR An established catalog or market price for a commercial item sold in substantial quantities to the general public OR Prices set by law or regulation.

Exhibit 7-17. Cost and Pricing Certificates.

When required under FAR 15.804-2 (see Exhibit 7-17), firms must submit complete data and "certify" that the data were **accurate, current, and complete** as of the date on which the Government and the firm concluded price negotiations and reached agreement on the price. For this purpose, the firm must sign and submit a "Certificate of Current Cost or Pricing Data". If the firm's certification later proves false, the Government might be entitled to a price reduction (see section 8.3.2.3) for the defective data.

In other cases (e.g., for sole source negotiations under the dollar threshold for certification), the contracting officer may ask the firm to provide "uncertified" partial, limited, or complete data on costs.

7.3.1.5 Audits

- Define an audit.
- State reasons why an audit may be necessary.
- State the general procedures taken when an audit is necessary.

*Per FAC 90-10, the dollar threshold is \$500,000 for the Department of Defense, NASA, and the Coast Guard.

CHAPTER 7

Definition

FAR 15.805-5

To audit means to review a company's accounting procedures, accounting practices, books, records, documents, and other evidence related to (a) cost or pricing data or (b) costs claimed to have been incurred or anticipated to be incurred in performing a contract. Audit reports include findings on such matters as:

- The firm's basis and method for estimating costs.
- The accuracy, completeness, and currency of submitted cost or pricing data.
- Additional cost or pricing data of relevance to the proposal.
- The dollar impact of technical analyses received by the auditor.
- The adequacy of the offeror's estimating methods and accounting systems.

FAR 15.803

An auditor's recommendations and counsel are advisory only. CO's are solely responsible for the final pricing decision.

When to Audit

CO's request the help of auditors when data on hand are not sufficient to establish prenegotiation objectives. The audit may be performed by the agency's own auditors or by arrangement with such activities as the Defense Contract Audit Agency. The CO reviews the audit report, resolves questions on the audit with auditors, and applies the auditors's findings in developing prenegotiation objectives.

7.3.1.6 Cost Analysis

FAR 15.805-3

- Define cost analysis.
- Identify typical elements of cost.
- Identify when cost analyses are necessary.

Definition and Elements

Cost analysis is the review and evaluation of the separate cost elements and proposed profit stated in an offeror's proposal. Drawing in part on the technical evaluation of such matters as proposed quantities and on the audit report, the CO may establish prenegotiation objectives for the following elements of cost.

- Direct materials (quantity and price).
- Direct labor (quantity and rates).
- Indirect costs (e.g., Overhead and General and Administrative).
- Subcontracts.
- Other direct costs (e.g., Travel and Royalties).
- Profit or fee.

Purpose and Application

FAR 15.803

The central issue, in cost analysis, is whether a proposed cost is realistic—assuming reasonable economy and efficiency—and otherwise allowable (see Chapter 8, Exhibit 8-12). The FAR, however, cautions against preoccupation with any one element of cost or believing that an agreement must be reached on every individual element. In negotiated procurements, the ultimate goal is an agreement on an overall price (or total estimated cost) and related terms and conditions (e.g., contract type and/or profit/fee) that, taken as a whole, is fair and reasonable to both parties.

7.3.1.7 Evaluating Other Terms & Conditions

- Identify terms and conditions other than technical and price that may be the subject of negotiations.

Offerors may present counterproposals on various terms and conditions of the RFP. For example, an offeror may propose that the Government:

- Use a different type of contract than solicited.
- Provide financing.
- Furnish property for the contract.
- Lease rather than purchase.
- Extend the proposed delivery schedule.

COs evaluate such counterproposals, both to establish the competitive range and prepare negotiation objectives and strategies.

7.3.1.8 Competitive Range

- State the purpose of establishing a competitive range.
- State the criteria for determining a competitive range.
- State the impact of not establishing a competitive range.

Purpose and Criteria

FAR 15.609

After proposals have been evaluated and rated, the CO establishes a competitive range to determine which proposals warrant further consideration. The CO uses evaluation results (price and other factors) to establish the range. The range includes:

- Proposals with a reasonable chance of being selected for award.
- Proposals that, after discussions, could be strengthened so as to have a reasonable chance of being selected for award.

This procedure might be viewed as a process of elimination leading toward source selection. The CO conducts written or oral discussions with all offerors in the competitive range.

Impact

Failure to include potential “awardees” in the competitive range may deprive the agency of the opportunity to contract with a desirable source at a favorable price. Also, the excluded offerors may have grounds for a successful protest.

On the other hand, the failure to properly exclude or eliminate unsuccessful sources from the competitive range will unnecessarily prolong discussion and puts an undue burden on evaluators. This wastes Government and offeror resources and falsely indicates to those offerors that they have a chance of being awarded the contract.

In lieu of setting a competitive range, the contracting officer may elect to award without discussions—if (a) the RFP provided for this possibility, and (b) no discussions are held with any offeror. However, the contracting officer must be able to clearly demonstrate that the most favorable initial proposal is at a fair and reasonable price and that discussions would not result in a lower overall cost to the Government.

7.3.2 Discussions

7.3.2.1 Factfinding

FAR 15.807(a)

Definition

- Define factfinding.
- List elements that may emerge during a factfinding session with an offeror.

Factfinding is the process of identifying and obtaining information necessary to complete the evaluation of proposals.



For example suppose an offeror states that its product will be “waterproof to a depth of 100 feet,” as required by the specification. In order to determine the validity or credibility of the offeror’s proposal, the CO would ask for engineering data to show how the waterproofing will be accomplished.

Outcomes

After conducting a factfinding session, the CO determines whether there is a need to:

- Obtain additional information from the offeror.
- Revise prenegotiation objectives.
- Eliminate the proposal from the competitive range.

Factfinding vs. Negotiations

The CO arranges for factfinding sessions, if required. The CO must ensure that factfinding sessions do not become negotiation or discussion sessions. Negotiation sessions are held later with offerors whose proposals are in the competitive range.

7.3.2.2 Negotiation Strategy

- State several negotiation strategies and tactics.

Basis for the Strategy

When negotiations are necessary, the CO prepares a negotiation plan that includes prenegotiation objectives and strategies for attaining them, based on information taken from sources such as the:

- RFP.
- Proposal.
- Factfinding results.
- Field pricing report, including any audit findings.
- Independent Government cost estimate.
- Technical evaluation.
- Acquisition histories and market research.

Typical Strategies

The plan will include negotiation tactics and strategies such as:

- Assigning roles to members of the Government's negotiation team. For example, use engineering, accounting, and legal personnel to address critical issues involving their expertise.
- Opening negotiations with preplanned positions designed to achieve negotiation objectives.
- Using preplanned counter-offers to work toward your objectives.
- Offering concessions of lesser value in exchange for concessions that are of greater value to the Government.

The plan should also address the offeror's likely strategies and potential counters.

7.3.2.3 Conducting Negotiations

FAR 15.610

- Briefly explain what takes place during a negotiation session.
- List examples of restrictions on negotiation sessions.
- List what goes into a price negotiation memorandum when a selection for award decision is made (negotiation).

The CO develops an agenda for each negotiation. The agenda is designed to achieve the presolicitation objectives using the already planned negotiation strategies.

CHAPTER 7

Conducting Discussions

For competitive procurements, discussions are conducted with each offeror in the competitive range. A primary purpose of the discussions is to impart enough information to the offeror to afford the offeror a fair and reasonable opportunity to identify and correct deficiencies in its proposal. At the conclusion of discussions, the offerors are asked to submit a “best and final offer” (BAFO). If the discussions have been successful, one or more of the offerors will submit a BAFO that meets the highest expectations of the Government (e.g., a superior technical proposal at a competitive price).

For a non-competitive procurement, the CO will conduct negotiations with the contractor until a favorable agreement (best case) or an acceptable agreement (not necessarily favorable) is reached. However, the Government is not obliged to reach agreement if an acceptable agreement is not possible.

True negotiation includes bargaining. Both parties, the Government and the offeror, establish their objectives and enter into the negotiations with the expectation of bargaining to achieve those objectives.

Both negotiation teams have a leader, with the CO as the Government leader. Typically, the CO establishes the agenda because, as the buyer, the Government is raising questions about the seller's offer. The CO follows the agenda and uses the negotiation strategy. Caucuses may be used as necessary so that either party can privately discuss an issue needing resolution or a change in objectives.

In competitive negotiations, the negotiations are concluded when:

- All issues have been discussed.
- Both parties understand each other's position.
- The CO requests the offeror to submit its BAFO.

Restricting Discussions

In sole-source negotiations, negotiations are concluded when agreement has been reached on all items to be negotiated.

There are several restrictions on conducting negotiations; some are listed in Exhibit 7-18.

CAVEATS FOR COMPETITIVE DISCUSSIONS

FAR 15.610(d)

- Never indicate to offerors they will win the award.
- Never give one offeror an advantage by disclosing information about other offerors' prices or technical proposals.
- Never cite non-existent regulations or make false statements.
- Never disclose the Government cost estimate.
- Never allow team members to disagree (unless planned) during negotiations.
- Never allow deadlines to affect the course of negotiations.
- Do not use the same strategies/tactics all the time.
- Do not engage in technical leveling or transfusion.*
- Do not use auction techniques. *

*Exhibit 7-18. Negotiation Caveats.*Documenting
Discussions

FAR 15.808

The CO documents discussions in a Price Negotiation Memorandum. Include such information as the purpose of the negotiations, identity of Government and contractor representatives, extent of reliance on certified cost and pricing data, basis for any waiver of cost and pricing data, summary of the contractor's proposal and the Government's prenegotiation positions, and the most significant facts or considerations in the establishment of prenegotiation positions on price and the negotiated price.

*“Auction” techniques include (1) indicating to an offeror a cost or price that must be offered to receive further consideration, (2) advising an offeror of its price standing relative to another offeror, and (3) otherwise furnishing information about other offerors' prices. “Technical Leveling” means helping an offeror bring its technical proposal up to the level of other proposals through successive rounds of discussion. “Technical Transfusion” means disclosing technical information supplied by one offeror to other offerors.

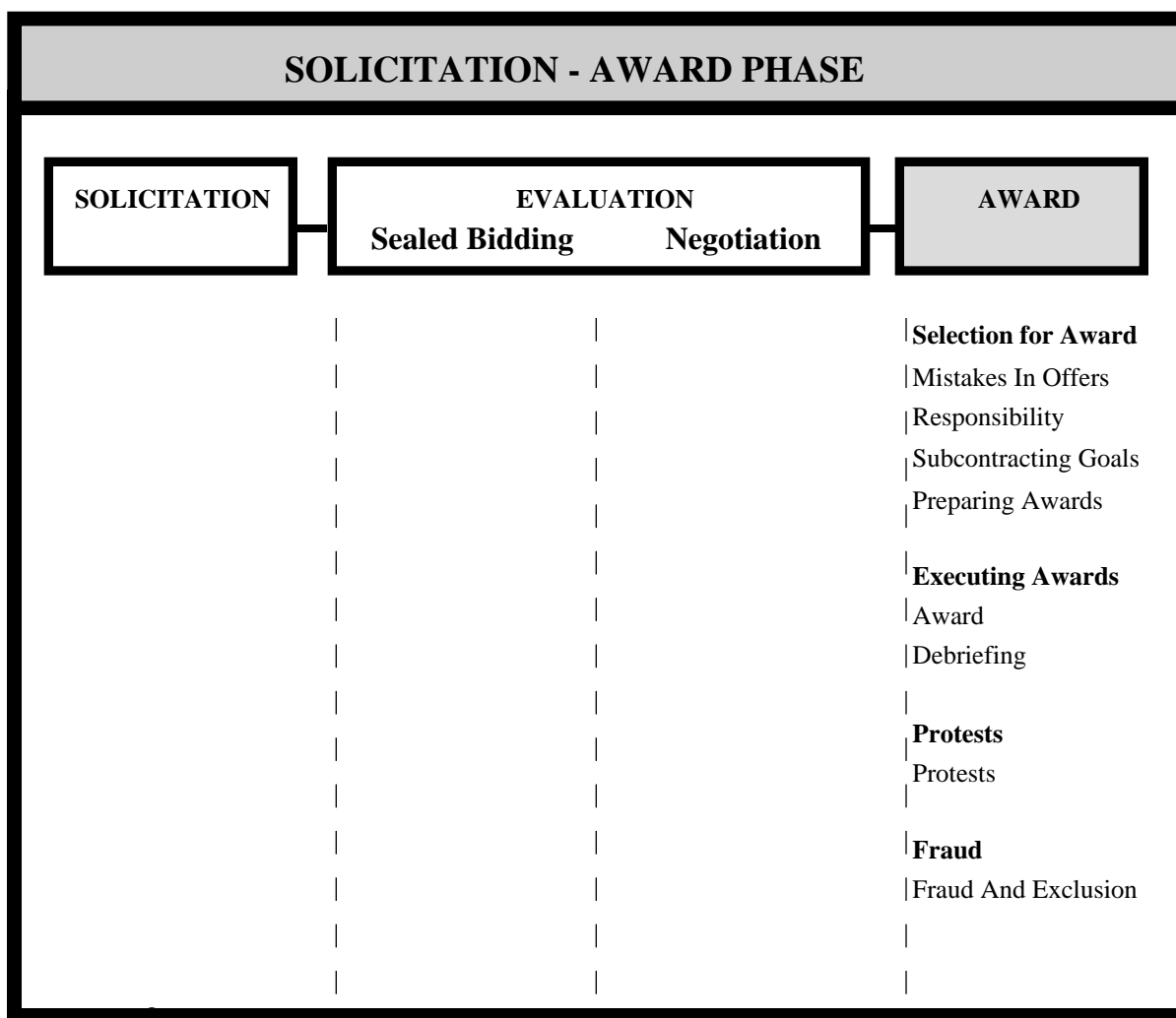
7.4 AWARD

Exhibit 7-19. Award (The Third Function of the Solicitation-Award Phase).

Award is the third and final function of Phase 2, (the “Solicitation and Award Phase”), of the Federal Acquisition Process. When studying contract award, you will recognize that some procedures vary depending on whether the contract results from sealed bidding or negotiation procedures.

7.4.1 Selection for Award

7.4.1.1 Mistakes in Offers

- List potential mistakes in offers.
- State an example of how a mistake in bid or proposal may be resolved.

The Nature and Harm of Mistakes in Offers

FAR 15.607

Unfortunately, offerors often err in estimating costs and calculating a proposed price. In contracting by negotiation, mistakes in proposals that surface before award tend to have little impact because:

- Discussions are permitted, and
- The offeror can correct mistakes or withdraw the proposal at any time before award.

FAR 14.406 & 15.105

Preaward mistakes in sealed bidding are of more concern because discussions are prohibited and a bid ordinarily cannot be changed or withdrawn after bid opening — it is firm until the time for acceptance has elapsed. Of equally grave concern are mistakes in either bids or proposals alleged after award.

On the one hand, the Government must avoid giving the offeror "two bites at the apple," to the detriment of the rights of other offerors and the integrity of the Federal acquisition process. On the other hand, ignoring genuine mistakes might :

- Force the awardee to work at a significant risk of losing money (with a correspondingly high risk of default or unacceptable performance), while
- Denying award to offerors who prepared (often at great expense) legitimate offers—which, in the long run, would tend to discourage them from pursuing Government contracts.

For these reasons, the FAR establishes procedures for (1) reviewing offers for mistakes and (2) resolving mistakes alleged by contractors.

Identifying Potential Preaward Mistakes

When reviewing offers, look for:

- Apparent clerical mistakes, such as a missing decimal point.
- Potential non-clerical mistakes, such as a price that is so much lower than other offers or your own estimate, based on market research, as to indicate the possibility of error.

If you find potential mistakes , ask the offeror to verify the offer.

CHAPTER 7

Resolving Mistakes

Based either on a call from the CO to verify an offer or upon his/her own independent review of the offer, an offeror may allege a mistake.

If an offeror alleges a mistake prior to award in a negotiated acquisition, the “mistake” would become a matter for discussion and presumably would be rectified in the firm's best and final offer.

If a bidder alleges a mistake prior to award in sealed bidding, the bidder must request permission from the CO to correct or withdraw the bid. The CO in turn may reject the request and hold the bidder to the bid. The CO may do otherwise only when:

- The mistake is alleged in writing.
- Evidence of the mistake is clear and convincing.

If, regardless of the method of procurement, a contractor alleges a mistake in its offer after award, the contractor must request either that the contract be rescinded (i.e., terminated) or reformed (i.e., modified). The CO in turn may reject the request and hold the contractor to the awarded contract. The CO may do otherwise only when:

- The mistake is alleged in writing.
- Evidence of the mistake is clear and convincing.
- The mistake was so apparent as to have charged the CO with notice of the probability of a mistake.

Constraints on the CO's Authority to Resolve Mistakes

Other than for preaward mistakes in negotiated acquisitions, the CO's options are constrained by such considerations as whether:

- The offeror's intended price can be calculated from available evidence.
- The intended price would have been lower than the next lowest offer in line for award.

Moreover, the CO may need to obtain approval for any proposed resolution of the mistake from a higher level (e.g., from the agency head or designee if the decision is to permit withdrawal of a bid after opening).

7.4.1.2 Responsibility**FAR 9.1**

- Define responsible offeror.
- List the general standards of contract responsibility.

Definition and Standards A “responsible offeror” is an offeror that satisfies all of the standards listed in Exhibit 7-20:

RESPONSIBILITY STANDARDS**FAR 9.104**

- Adequate financial resources.¹
- A satisfactory performance record.
- Ability to perform the work/services required by the contract within the required delivery schedule.
- A satisfactory record of integrity and business ethics.
- The necessary organization, experience, accounting and operational controls, and technical skills.¹
- The necessary production, construction, and technical equipment and facilities.¹
- Qualified and eligible to receive an award under applicable laws and regulations.
- Any special standards stated in the solicitation.

Exhibit 7-20. Responsibility Standards.

Award Only to Responsible Firms

Awarding solely on the basis of lowest evaluated price can be false economy if there is a substantial risk of subsequent default, late deliveries, or performance that is otherwise unsatisfactory. CO's are therefore not required to award to a supplier solely because that supplier has submitted the lowest price. Rather, CO's may award only to firms that have affirmatively demonstrated their responsibility and, when necessary, the responsibility of proposed subcontractors. (In practice, the CO's signature on a contract constitutes a determination that the prospective contractor is responsible with respect to that contract.)

¹Or the ability to obtain them.

For a small business concern, if the CO determines that it is not responsible, the matter is referred to the Small Business Administration for a final decision.

Obtaining Information on a Firm's Responsibility

The CO first checks the “List of Parties Excluded From Government Procurement Programs,” to determine whether a contractor is debarred, suspended, or otherwise ineligible to receive a Government contract. If the concern has not been excluded, the CO next reviews data on the firm's responsibility from the offer, acquisition histories, and market research. If the CO, after such research, lacks the data to affirm the offeror's responsibility, the CO may ask the cognizant contract administration activity to perform a preaward survey of a prospective contractor's capability to perform the proposed contract.

7.4.1.3 Subcontracting Goals

- List the goals of the subcontracting plan and explain the purpose of having goals.
- State the threshold and the criteria for when a subcontracting plan is required.

FAR 19.7

Goal of Subcontracting Plans

A goal of the Federal acquisition process is to provide contracting opportunities for small and small/disadvantaged business concerns. Because prime contractors award substantial numbers of subcontracts, it is Government policy that prime contractors provide subcontracting opportunities to small and small/disadvantaged business concerns. This policy is put into effect by certain clauses that are included in government contracts and subcontracts.

In some procurements, the apparently successful offeror is required to submit a subcontracting plan. The plan describes how the offeror will provide subcontract opportunities to small, small/disadvantaged, and women-owned small businesses.

Requirement for Subcontracting Plans

Subcontracting plans are required if the contract action is expected to exceed \$500,000 (\$1,000,000 for construction), and the contract is expected to result in subcontracting opportunities.

Subcontracting plans are not required when:

- The prime contract is awarded to a small business concern.
- The contract is for personal services.
- The contract is to be performed outside the US.

7.4.1.4 Preparing Awards

- List the reasons for making or recommending award when contracting by sealed bidding, and when contracting by negotiation.

Recommending Award in Sealed Bidding

When contracting by sealed bidding, the CO selects or recommends a bidder for award based on the price and price-related factors stated in the IFB. In selecting the awardee, the CO ensures:

- All requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.
- Multiple award and equal low bid procedures, if applicable, were handled correctly.
- Sufficient funds are available for obligation.

Recommending Award in Competitive Negotiations

When contracting by negotiation, the CO selects, or recommends to the Source Selection Official, an offeror for award. In selecting the awardee, the CO ensures:

- Evaluation factors (only those factors stated in the RFP) have been properly considered.
- Scores or ratings of the competing proposals have been arrived at according to the selection plan.
- The competitive range was fairly established.
- All requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.
- The offer selected for award represents the best value for the Government, in terms of the RFP's evaluation factors.
- Sufficient funds are available for obligation.

CHAPTER 7

Preparing the Contract

For both methods of contracting, documentation should be sufficient to allow accurate reconstruction of the procurement for immediate review and for future reference. Drawing on that documentation, the CO must prepare a contract for execution that establishes a legal and binding agreement (e.g., offer, acceptance, consideration, competent parties, lawful purpose, and certainty of terms). When soliciting sealed bids, incorporate the bid and all clauses from the IFB, including any amendments to the IFB, in the contract. In negotiated acquisitions, the contract must accurately convey that which was contemplated by the parties, as reflected in the RFP (including any amendments thereto) and the best and final offer.

7.4.2 Executing Awards

7.4.2.1 Award

- List the steps in preparing and awarding a contract using both sealed bidding (including use of SF 26 and SF 33) and negotiation.

Executing the Contract

Contracts may be awarded by signing the contract itself or by issuing a Notice of Award. (Note that only a duly appointed CO, acting within the scope of his or her authority, may sign a contract). Award is usually made by (the CO) signing the award portion of the Standard Form 33, “Solicitation, Offer and Award.”

If, however, an offer is changed so that it results in the need for a new, bilateral award document, the SF 26 “Award/Contract” is normally used, and both the offeror and the CO sign it. In some circumstances, such as contracting for construction, other forms may be required.

Notification and Distribution

The CO may also be required to notify:

- Unsuccessful offerors.
- SBA, the Department of Labor, and other such Government agencies.
- The public at large, through a CBD synopsis of the award and other announcements.
- The Federal Procurement Data System.

Copies of the signed contract are typically distributed to the contractor(s), paying office, contract administration activities, audit services, and other such parties.

7.4.2.2 Debriefing

- Define debriefing.
- Explain how an unsuccessful offeror is debriefed.

Definition

Debriefing means informing unsuccessful offerors of the basis for the selection decision and contract award, when the contract was awarded on a basis other than price alone. Debriefing is therefore only held when award has been made through competitive negotiation procedures.

The CO debriefs unsuccessful offerors who ask, in writing, for the debriefing.

DEBRIEFING

FAR 15.1003

- Only discuss deficiencies in the business and technical terms and conditions specific to the offerors' proposal.
- Do not disclose the relative merits or technical standing of offers from other competitors or how other competitors scored.
- Withhold information that is not releasable under the Freedom of Information Act, such as:
 - trade secrets
 - confidential manufacturing process and techniques
 - confidential financial information (including profit, indirect cost rates, and cost breakdowns)

Exhibit 7-21. Debriefing.

7.4.3 Protests

FAR 33.1

- Define the terms protest and interested parties.
- List the protest forums to which a protest may be submitted.
- List the various bases on which protest are submitted.

CHAPTER 7

Definitions

A protest is a written objection by an interested party to a: (1) solicitation for the acquisition of supplies or services, or (2) proposed award or the award of such a contract.

An interested party is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract, or the failure to award a contract.

Protest Forums

If the CO knows that an interested party intends to file a protest, the CO encourages the party to seek resolution within the agency. Otherwise, the interested party may pursue a protest with:

- The Comptroller General (GAO).
- The General Services Board of Contract of Appeals (GSBCA), for certain procurements of ADP.
- The Department of Labor, for protests under Walsh-Healy.
- SBA, for protests of an offeror's eligibility for set asides.
- U.S. Courts.

Reasons for Protests

There are numerous reasons why an interested party may file a protest. For example, the interested party may allege that:

- Specifications are unduly restrictive.
- A “late” bid or “nonresponsive” bid was accepted.
- It was improperly excluded from the competitive range.
- Award was improperly made.
- The awardee is not responsible.

Impact on the Acquisition

Impact varies with the protest forum. For instance, pending the Comptroller General's review of a protest, COs generally:

- Delay award, when notice of the protest arrives prior to award.
- Suspend or terminate award, if the notice comes within 10 calendar days after award.

After reviewing the protest, the Comptroller General may recommend such actions as cancellation and resolicitation. The Comptroller General may also recommend award of protest costs, such as the costs of:¹

- Filing and pursuing the protest, and
- Bid or proposal preparation.

¹FAC 90-6

7.4.4 Fraud

- Define the term fraud.
- Identify indications that fraud or other civil or criminal offenses by a contractor or Federal personnel have occurred.

Definition	Fraud is a felonious act of corruption, or an attempt to cheat the Government or corrupt its agents.
Fraud Indicators	<p>Examples of indicators of fraud on the part of Government personnel:</p> <ul style="list-style-type: none"> • Improper disclosure of information on pending or ongoing procurements. • Slanting specifications to the products or capabilities of a single contractor without adequate justification for such slanting. • Splitting requirements to get under the small purchase threshold. • Falsified statements in sole source recommendations. <p>Examples of indicators of fraud and other improper conduct on the part of contractors:</p> <ul style="list-style-type: none"> • Bid suppression or limiting, complementary bidding, bid rotation, or market division. • Bribes and gratuities. • False invoices and cost mischarging. • Falsification of Government furnished property records. • Failure to update cost or pricing data upon receiving information that prices have decreased.
Reporting Fraud	If you find any such indication of fraud or other improper conduct on the part of an offeror, contractor, or Government personnel, report all relevant data to the agency's Inspector General and to other relevant Government officials, as provided in your agency's procedures.
Potential Impact on the Firm's Eligibility for Awards	Prospective contractors who are convicted of fraud, or who have seriously violated the terms of a Government contract(s) or subcontract(s), may be excluded from receiving a Government contract. Performance problems may also be a basis for exclusion (see Section 8.2.1.4). COs refer to the "List of Parties Excluded From Government Procurement Programs" to determine whether or not an offeror is debarred, suspended, proposed for debarment, or otherwise excluded from consideration.



CHAPTER 8

POST-AWARD ADMINISTRATION PHASE

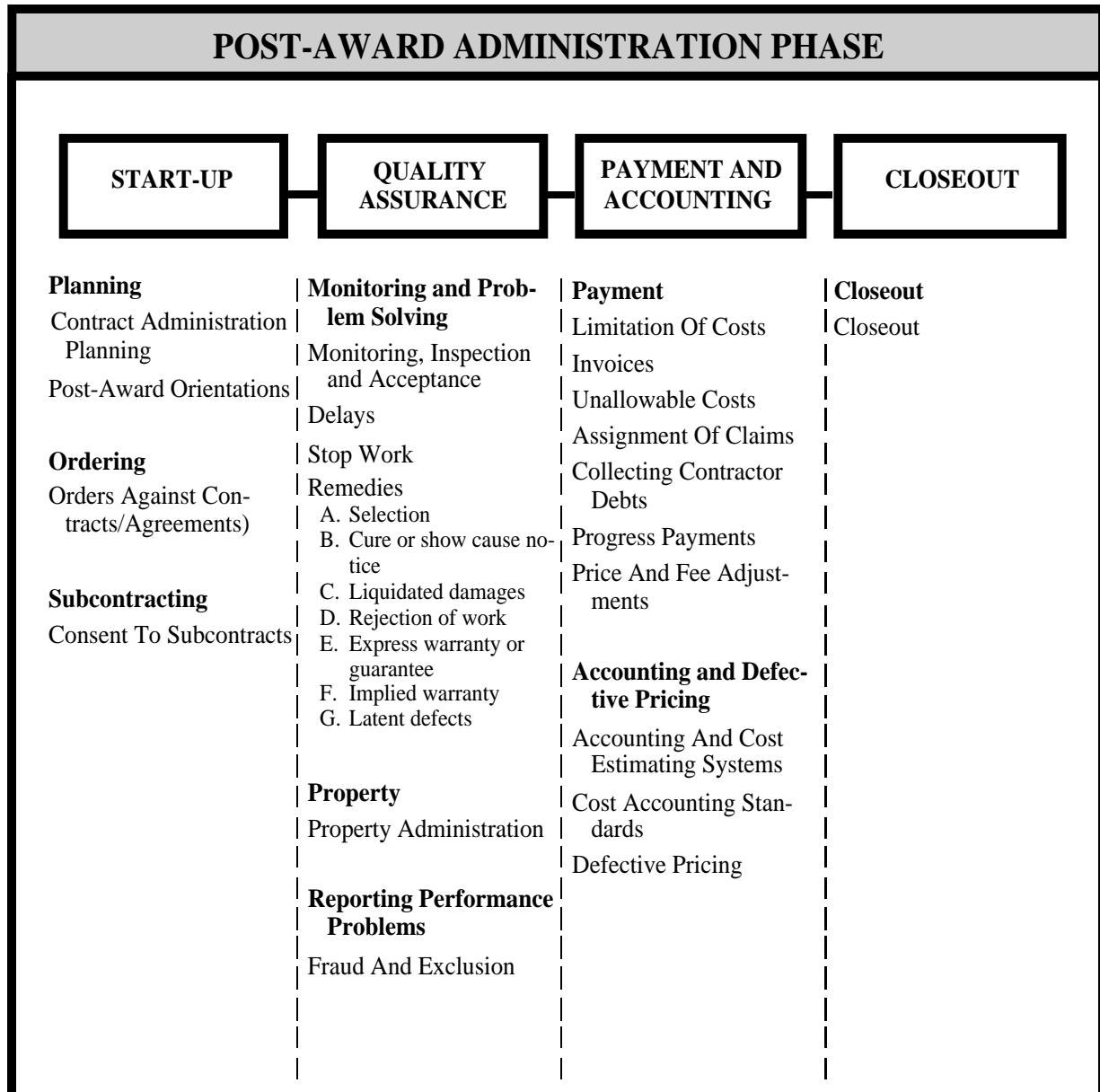


Exhibit 8-1. Post-Award Administration Phase of FAP Flowchart.

Learning Objectives

Learning objectives for this chapter appear before each section or subsection they apply to; they are highlighted with grey shading. After completing this chapter, you will be expected to know all the learning objectives for this chapter.

Exhibit 8-2. Learning Objectives.

CHAPTER INTRODUCTION

The Third Phase

Post-Award Administration is the third phase of the federal acquisition process. Just having a contract, however, does not satisfy your agency's need. The need will be satisfied only when the contractor delivers the required supplies or services on a timely basis and at the agreed-upon price. This is the fundamental objective of **Contract Administration (CA)** and includes the following basic functions:

1. **Start-Up.** The Government and contractor, respectively, plan and initiate performance of the work. With respect to the Government, this involves such steps as delegating responsibility for satisfying the Government's obligations under the contract, orienting the contractor, placing orders against the contract, and consenting to subcontracts.
2. **Quality Assurance.** The Government and contractor, respectively, assure that work satisfies the contract's requirements. On the part of the Government, this involves such steps as inspecting and accepting contract deliverables as they are received, determining the excusability of delays, and invoking formal remedies to bring contract performance back into line.
3. **Payment and Accounting.** The Government determines the amount due the contractor and, as provided in the contract, issues payment.
4. **Closeout.** When all deliverables have been accepted, the Government verifies that the contract is physically complete and that all applicable terms and conditions have in fact been satisfied.

8.1 START-UP

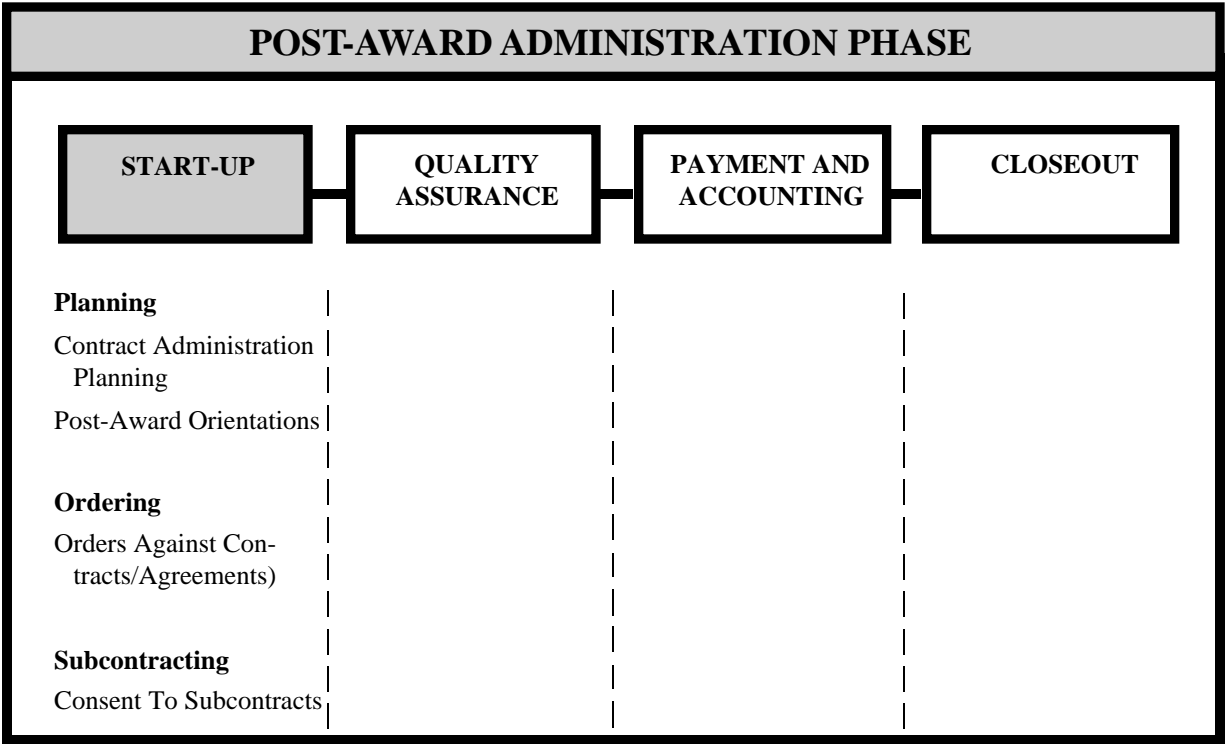


Exhibit 8-3. Start-Up. (The First Function of the Post-Award Administration Phase.)

8.1.1 Planning

After a contract is awarded, the CO redirects the Governments' efforts and resources from preaward activities to post-award activities. The first steps are to (1) plan administration and (2) orient the contractor.

8.1.1.1 Contract Administration Planning

- Describe typical elements of a contract administration plan.
- Describe the delegation of authority to CORs and COTRs.
- List duties typically delegated to ACOs.

Although the FAR does not require the CO to prepare a formal contract administration plan, the CO is responsible for ensuring that the parties have complied with all terms and conditions of the contract. At minimum, contracting officers should therefore track receipt of the deliverable (or performance of the service), acceptance, and payment under the contract. This is true, for example, when contracting for the furnishing and delivery of standard commercial items.

CHAPTER 8

Formal Contract Administration Plans

A formal contract administration plan is essential when the contract involves large dollar amounts or complex technical requirements. Those contracts place many duties and responsibilities on both parties. The contract administration plan should provide for:

- An appropriate level of surveillance or monitoring of contractor performance
- Timely and proper performance of the Government's responsibilities

TYPICAL ELEMENTS OF CONTRACT ADMINISTRATION PLANS

- Title of the contract, related identifiers, and criticality (per FAR 42.1105).
- Identity of the contractor and key contractor personnel.
- Location of files on the contract and the contractor.
- Brief description of the work to be performed (from § B-D of the UCF).
- Place of performance and/or delivery points (from §F of the UCF).
- Reporting requirements (from §H and I of the UCF).
- The contractor's milestones (from §F-I of the UCF) for such critical events as:
 - First article testing and reporting.
 - Performance or delivery.
 - Submission of progress reports.
 - Submission of invoices and other data related to payment.
- Tasks to be performed by Government personnel and milestones for each such task, with respect to such functions as:
 - Monitoring the contractor's quality assurance program.
 - Furnishing Government property to the contractor and monitoring its use.
 - Reviewing and responding to contractor reports.
 - Receiving, inspecting, and accepting the work.
 - Certifying costs incurred or physical progress for payment purposes.
 - Monitoring compliance with the small business subcontracting plan.
- Identity of the CO's Representatives (CORs) and Technical Representatives (COTRs).
- Tasks delegated to each COR and COTR (including any limits on their authority).

Exhibit 8-4. Important Elements of a Contract Administration Plan.

Delegating Authority to CORs and COTRs	CO's usually delegate authority to CORs and COTRs for such functions as inspection and acceptance. The delegations are generally made in writing and specify any limits on the delegated authority. In addition, CO's ensure that CORs and COTRs are aware of the doctrine of constructive changes and the potential consequences of exceeding the limits on their authority.
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Delegating Authority to ACOs	The procuring contract activity may retain a contract or assign it to another contracting office for administration:
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1. When a contractor's facility is located at a great distance from the buying office, CA functions may be assigned to another contracting office in the contractor's locality. For example, if a CO in Arlington, Virginia awards a contract to a company in Chicago, the CO might ask a contracting activity in Chicago to administer the contract.
2. The contract may be delegated to a Contract Administration Office which specializes in contract administration tasks.

Contract Administration offices typically employ Administrative Contracting Officers (ACOs), who are authorized by the Procuring Contracting Officer (PCO) to perform selected contract administration functions. However, even when the contract is assigned to another office for administration, the PCO often remains involved in such post-award functions as modifying the terms and conditions of the contract.

The Government's major CA organization is the **Defense Contract Management Command (DCMC)** within the Defense Logistics Agency. DCMC supports Defense COs but also provides CA services to civilian agencies on a reimbursable basis.

ACO Functions

FAR 42.3

The FAR lists more than sixty functions that are generally delegated to ACO's. Some of those functions are listed on Exhibit 8-5. When the contract is not assigned to an ACO, many of these functions are performed by the procuring office.

EXAMPLES OF CONTRACT ADMINISTRATION FUNCTIONS

- Conduct post-award orientation conferences.
- Review and approve or disapprove contractor's request for payments.
- Administer security requirements, if any.
- Perform property administration.
- Perform technical surveillance.
- Ensure compliance with quality assurance requirements.
- Review, approve or disapprove, and survey the contractor's purchasing system.
- Monitor small business subcontracting plans.
- Monitor overall performance to help ensure timely deliveries.

Exhibit 8-5. Examples of Contract Administration Functions.

8.1.1.2 Post-Award Orientation

- State the situations calling for a post-award orientation.
- State the major purposes of the orientation.

Need for Post-Award Orientations

FAR 42.5

In many cases, contracts are awarded and contractor performance begins routinely without any post-award orientation as such. In other cases, a post-award orientation may take the form of a phone call or letter. Post-award orientation conferences are normally held for complex contracts. Conferences are encouraged when contracting with small business and small/disadvantaged business concerns.

Purpose

CO's use post-award orientation conferences to:

- Ensure that both parties have a clear and mutual understanding of all contract requirements (especially when dealing with contractors who are inexperienced in furnishing deliverables to the Government),
- Identify and resolve potential problems, and
- Introduce the Government's representatives, furnish notices and other data to the contractor, and otherwise set the stage for a good working relationship under the contract.

Often, the persons who will perform or administer the work did not participate in events leading up to contract award. An orientation conference can help them understand the terms and conditions of the contract. On the other hand, post-award orientation conferences should not be conducted for the purpose of modifying the contract.

8.1.2 Orders Against Contracts/Agreements

- Describe the role of the CO in processing orders against Basic Ordering Agreements (BOAs) and indefinite-delivery contracts.

FAR 16.5 & 16.7

Indefinite-delivery contracts and Basic Ordering Agreements (BOAs) often serve as a basis for ordering supplies or services from contractors.

Indefinite-Delivery
Contracts

An indefinite-delivery contract may be used when the exact time, quantity, and/or place of delivery of specified supplies or services is not known at the time of contract award. For example, GSA uses indefinite delivery contracts to establish sources for common supply items.

During the period of the contract, orders may be placed for a specific quantity of the items where needed. Each order generally specifies the time, delivery point, and quantity for a partial shipment under the contract and, as such, merely fulfills the contract's terms and conditions.

Basic Ordering Agree-
ments

Basic Ordering Agreements are used to expedite contracting for uncertain requirements. For example, when awarding a contract for maintenance and overhaul of ships, the CO may also establish a BOA with the contractor for spare parts.

CHAPTER 8

Placing Orders

The BOA provides for the placement of orders for a category of supplies or services, should they be needed as the work progresses. In the case of BOAs, each order constitutes a separate and independent contract. The CO's responsibilities in placing orders against BOAs and indefinite-delivery contracts include the following:

- Ensuring that the appropriate type and amount of funds are available.
- Determining whether an existing Basic Ordering Agreement or indefinite-delivery contract may be used to obtain supplies or services. Note that:
 - If Basic Ordering Agreements are used, the CO must comply with FAR competition and publicizing requirements prior to placing each order.
 - Orders placed under Indefinite-Delivery Contracts need not be publicized and competed if these requirements were met when the contract was placed.

8.1.3 Subcontracting

8.3.1.1 Consent to Subcontractors

- State conditions under which the Government has the right to consent to subcontracting.
- State the factors to consider in making the consent decision.
- State how consent may be waived.

The Right of Consent

In many contracts, much of the work is actually performed by subcontractors. Thus, for prime contractors, the “start-up” phase often includes the awarding of subcontracts. Contractors are generally given a great deal of flexibility in determining the extent to which they will utilize subcontractors. However, some contracts include a clause that requires the Government's prior consent before the contractor can award a subcontract. Such clauses do not necessarily require prior consent to all subcontracts that the prime contractor plans to award. Rather, the requirement for consent is triggered by such factors as the:

- The type of contract that has been established with the prime contractor (e.g., for Firm Fixed Price contracts, FAR clause 244-1, Subcontracts (Fixed-Price Contracts), applies only to subcontracts resulting from unpriced modifications).
- Dollar value of the subcontract.
- Type of subcontract (fixed-price/cost reimbursement).
- Type of work to be performed by the subcontractors.

Factors in Consenting

When exercising consent authority, the CO will evaluate proposed subcontracts to ensure, among other things, that:

- The proposed subcontract is proper (e.g., the CO might ask: Is the proposed subcontractor on the “List of Parties Excluded From Government Procurement Programs”? Does the proposed subcontract establish a prohibited cost plus percentage of cost arrangement?).
- Proposed prices are reasonable (where possible, based on adequate price competition).
- The subcontract is placed with due regard for:
 - Subcontractor responsibility
 - Small business participation
 - Competition requirements
 - Other considerations specified in the FAR

Waiving Consent Requirements

FAR 44.2

Sometimes, a Government activity will conduct a Contractor Purchasing System Review (CPSR). If the contractor’s purchasing system meets CPSR standards, the CO may rely on that system and “waive” the need for the contractor to obtain Government consent before placing subcontracts.

8.2 QUALITY ASSURANCE

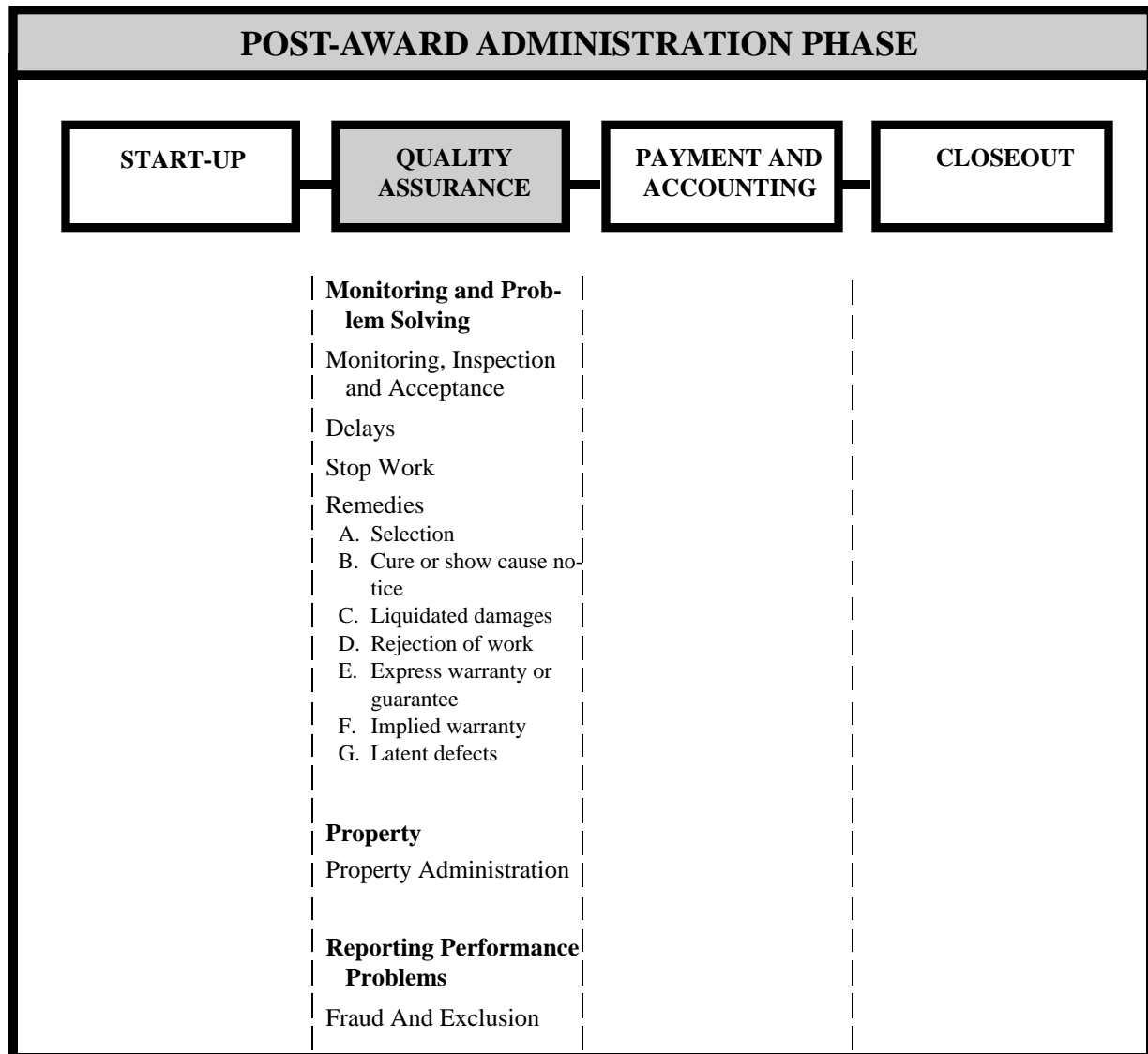


Exhibit 8-6. Quality Assurance. (The Second Function of the Post-Award Administration Phase.)

8.2.1 Monitoring and Problem Solving

8.2.1.1 Monitoring, Inspection, and Acceptance

- State the CO's major roles/responsibilities in inspection/acceptance.
- State the four basic types of performance problems.

Why Monitor Performance

FAR Part 46

Fixed-price contracts bind contractors to deliver the specified goods and/or services. However, even when the contractor is fundamentally responsible for the timely delivery of acceptable deliverables, the CO must at times protect the Government's interests through such means as:

- Monitoring contractor performance.
- Inspecting contractor products.
- Informing the contractor of any problems.
- Identifying and implementing contractual remedies.

In cost-reimbursement, time and materials, and labor hour contracts, the contractor is obligated only to make a good faith effort to perform the work of the contract within the ceiling price or limitation on costs established in the contract. In these contracts, surveillance of the contract is all the more important to ensure satisfactory performance.

Who Monitors Performance

Monitoring should therefore be consistent with the dollar value, type, and complexity of the contract. Who monitors a contract depends on the kind of contract.

- Under a fixed-price supply contract, the end user often inspects and accepts the deliverable as the CO's representative.
- Under a production contract, a quality assurance specialist often represents the CO, in terms of inspecting and accepting the work.
- In system contracting, a team or entire contract administration activity might be involved in monitoring, inspection, and acceptance.

The CO's Role

If a monitor identifies a problem that may have an adverse effect on the contract, the monitor should immediately notify the CO. The same is true if the monitor finds that Government action or failure to act is the problem, (e.g., failure to provide adequate Government-furnished property, if required by the contract). Upon notice of a problem, the CO's role is to resolve the problem by taking one or more of the appropriate steps in Exhibit 8-8.

TYPES OF PERFORMANCE PROBLEMS

Schedule:	Failure to deliver or make progress toward timely delivery.
Cost :	The contractor is exceeding cost estimates on a cost-reimbursement contract or is so overbudget under a fixed price contract as to endanger both schedule and performance (or even its very survival).
Quality:	The supplies or services in process or being delivered do not meet contract requirements or are not expected to do so.
Compliance:	The contractor is not complying with other terms and conditions of the contract (e.g., with clauses on labor rates, clean air and water, subcontracting goals, maintaining a drug-free workplace, etc.).

Exhibit 8-7. Examples of Performance Problems.

If such problems surface, the CO or ACO is ultimately responsible for their resolution.

STEPS IN RESOLVING PERFORMANCE PROBLEMS

- Verify and document evidence of the problem.
- Determine the potential impact on cost, delivery, and other requirements.
- Determine whether the delay (if any) is excusable or whether the Government is otherwise at fault to any extent (see section 8.2.1.2).
- Where necessary, stop work-in-process while the problem is being resolved (see section 8.2.1.3).
- Seek an informal resolution of the problem.
- Where necessary, invoke any applicable contractual remedy (e.g., rejection of work, liquidated damages, invoking of a warranty, or issuance of a cure or show cause notice—see section 8.2.1.4).
- Modify the contract when and as necessary to resolve the problem (see section 9.1).
- As a last resort, terminate the contract (see section 9.2.1).
- Keep all interested parties informed of the contract's status and document the file.

Exhibit 8-8. Steps In Resolving Performance Problems.

POST-AWARD ADMINISTRATION PHASE

The requiring activity and contracting personnel should always be alert to a contractor's poor performance so that appropriate action may be promptly initiated by the CO. The action may either prevent the need for termination or protect the rights of the Government if termination becomes necessary.

Inspector Livingston, I presume?

After the contractor begins work on the Livingston's new house, it is important for them to ensure that the work is being done according to the contract. The fifth question in the "Livingston's House Dilemma" vignette in Chapter 5 asks "How can we be sure the work is done according to the contract?" Just as the Government must protect its interests by monitoring contractor performance and inspecting contractor products, the Livingston's must do the same. Even though the Livingston's are working with a firm-fixed price contract, there is still a need to monitor the work as it progresses to ensure that the builder meets the specification requirements. Because the Livingstons' need assistance in monitoring the contract, they arranged for the architect to also provide monitoring services. In addition, the local county building inspectors will ensure that the construction is in accordance with the building code. Monitoring, inspection, and acceptance, are very important during the administration of any contract.

8.2.1.2 Delays

- State the major types of contract delays.
- State the CO's role in dealing with delays.

When a delay occurs in contract performance, it is due to one, or a combination, of the three causes listed in Exhibit 8-9, below.

CAUSES OF DELAY

- Contractor's negligence or fault.
- Government negligence or fault (e.g., failure to furnish Government property at the place and time specified in the contract).
- Factors beyond the control of either (e.g., acts of God, fire, floods, epidemics, quarantine restrictions, and—under some circumstances—strikes).

Exhibit 8-9. Causes of Delays.

CHAPTER 8

The CO's Role

When one or both of the last two causes apply, the delay might be “excusable” in part or in whole. To the extent that the delay is “excusable,” the contractor may be entitled to an extension of the delivery schedule without consideration to the Government. If the Government is at fault, the contractor may also be entitled to an equitable adjustment in the contract price. The CO is responsible for determining whether the delay is excusable, the extent to which it is excusable, the length of any time extension in the delivery or performance schedule, and any necessary equitable adjustment.

8.2.1.3 Stop Work

FAR 12.503

- State situations under which a stop work order is necessary.
- Describe the “stop work” procedure.

When Work May Be Stopped

Some contracts include a clause (e.g., FAR clause 52.212-13) that gives the CO the right to stop a contractor’s work, in whole or part, to protect the best interests of the Government. Work stoppages tend to be costly as a rule and should only be contemplated when the benefits outweigh the costs. Among other reasons, a stop work order might be necessary when:

- Considering the need for terminating the contract (although a stop work order may not be used in lieu of a termination notice).
- The Government cannot furnish property or services per the contract schedule.
- Quality assurance personnel request that a production line be stopped to allow recalibration of their tools.
- The Government needs time to consider a contractor proposal for substantially changing the way the product is made.
- The requiring activity is considering a contract modification that would substantially change the end product.

The Stop Work Procedure

In such situations as the above, it may be in the best interests of the Government to temporarily stop the work-in-process. The CO may unilaterally stop work for 90 days, or the work may be stopped for a longer period to which the contractor and the CO mutually agree. At the end of the stop work period, work resumes unless the CO:

- Extends the stop work period through a supplemental agreement,
- Cancels the stop work order, thus permitting work to resume prior to expiration of the stop work period, or
- Terminates the contract for either default or convenience.

POST-AWARD ADMINISTRATION PHASE

The contractor must comply with the terms of the order and take reasonable steps to minimize costs associated with the work stoppage.

8.2.1.4 Remedies

FAR 46.407, 46.7,
and 49.607

- State the CO's role in remedying contract performance problems.
- State the major contract remedies.

The CO's Role

In most cases, contractor performance problems can be informally resolved. At other times, the CO must invoke the formal remedies in the contract. Remedies available to the CO depend, in large part, on the specific clauses in the contract. For instance, many contracts do not have a liquidated damages clause.

EXAMPLES OF REMEDIES

- Assessment of liquidated damages (i.e., a dollar amount charged for each day deliveries are late or for other breaches, if and as specified in the contract).
- Rejection of work that does not conform to the contract's requirements. Generally when work is rejected, the contractor must either (1) correct the work at no additional cost to the Government or (2) offer other consideration. Note that, under the standard inspection clauses, work may be rejected after acceptance only upon a finding of fraud, gross mistake, or latent defects.
- Exercise of the applicable warranty or guarantee expressly established in the contract or, in the absence of an express warranty, of an implied warranty (if any).
- Issuance of a "cure" notice or "show cause" notice. Both notices are preliminary to a termination for default if the contractor does not overcome the problem.
 - A cure notice is issued when the contractor has sufficient time left on the contract (i.e., 10 days or more prior to the contract's delivery date) to correct the problem and still meet the delivery schedule. The cure notice provides the contractor with an opportunity to convince the CO that the problem will be cured and that termination for default is therefore not necessary.
 - A show cause letter notifies the contractor that a default termination is impending and provides the contractor with an opportunity to "show cause" as to why such action should not be taken.
- Termination for default, in which case the Government can obtain the deliverable from another contractor and bill the defaulted contractor for the excess costs of the reprocurring the deliverable (see section 9.2).

Exhibit 8-10. Examples of Remedies.

8.2.2 Property**FAR Part 45**

- State the CO's role in property administration.
- State the general approaches that the CO uses to settle cases of Government property lost or damaged during contractor use.

The CO's Role in Furnishing Property

Some contracts provide for the furnishing of Government property to the contractor. Such contracts impose obligations on the Government, such as putting the property into the contractor's hands by the dates specified in the contract. The CO therefore has to track the performance of the Government as well as of the contractor in terms of compliance with property-related clauses.

When the Government furnishes property, the contractor is responsible for inventorying, maintaining, and protecting the property. The contractor must also ensure that the property is only used for purposes of the contract. In addition, the Government at times is entitled to property acquired by the contractor for work on the contract. That property also must be inventoried, maintained, protected, and properly utilized. Therefore, CO's typically rely on Government property specialists to:

- Confirm that the contractor has an adequate property management system.
- Monitor the contractor's management of the property.
- Oversee recovery or disposal of the property.

Loss or Damage

As a general rule, contractors are responsible and liable for Government property in their possession. What if the contractor loses or damages government property? The CO must first determine the value and extent of the damage and the contractor's liability for the damage, if any. The CO then works with the contractor to repair or replace the property or otherwise mitigate the damage, as provided in the property clause.

Disposal

When the contractor has finished working with the Government's property, the CO must recover the property or see to its disposal. At times, used Government property may be left with the contractor to:

- Save money.
- Expedite performance on other contracts with that firm.
- Ensure standardization of products delivered under other contracts.

8.2.3 Reporting Performance Problems

FAR 9.4

- State the CO's role in reporting contractors to debarring officials.
- State what happens to an existing contract when the contractor is debarred.

What to Report

The CO is responsible for resolving performance problems using—where necessary—the remedies provided for in the contract. If such performance problems re-occur, or if the CO suspects that the contractor may be guilty of unethical business practices, report such problems or suspicions to the agency's debarring official.

The CO should report such performance problems as:

- Repeated late deliveries.
- Repeated rejections of work.
- Work of marginal quality.
- Violation of the Drug-Free Workplace Act .

The CO should also report any evidence of such unethical business practices as:

- Fronting for a debarred contractor.
- Collusion.
- Offering of gratuities.
- Kickbacks to suppliers.

The CO, or others who monitor the contractor, shall follow agency procedures in reporting any of the above situations to the agency "debaring official."

The Debarring Official's Options

The debarring official assesses the report, along with reports on that same firm(if any) from other COs. Through investigation, the debarring official determines whether the contractor should be:

- Debarred,
- Suspended, or
- Declared ineligible.

CHAPTER 8

Suspensions are temporary, generally not exceeding 12 months unless legal proceedings have been initiated. Debarments vary, depending on the seriousness of the cause, but generally do not exceed three years. Ineligibility, however, runs until the cause for the ineligibility is corrected.

Completion of Existing Contracts

A contractor who is listed as debarred, suspended, proposed for debarment, or ineligible may not receive new contracts. However, agencies may continue contracts (or subcontracts) in existence at the time. Contracts may not be renewed or extended unless the agency head or designee states in writing the compelling reasons to do so.

8.3 PAYMENT AND ACCOUNTING

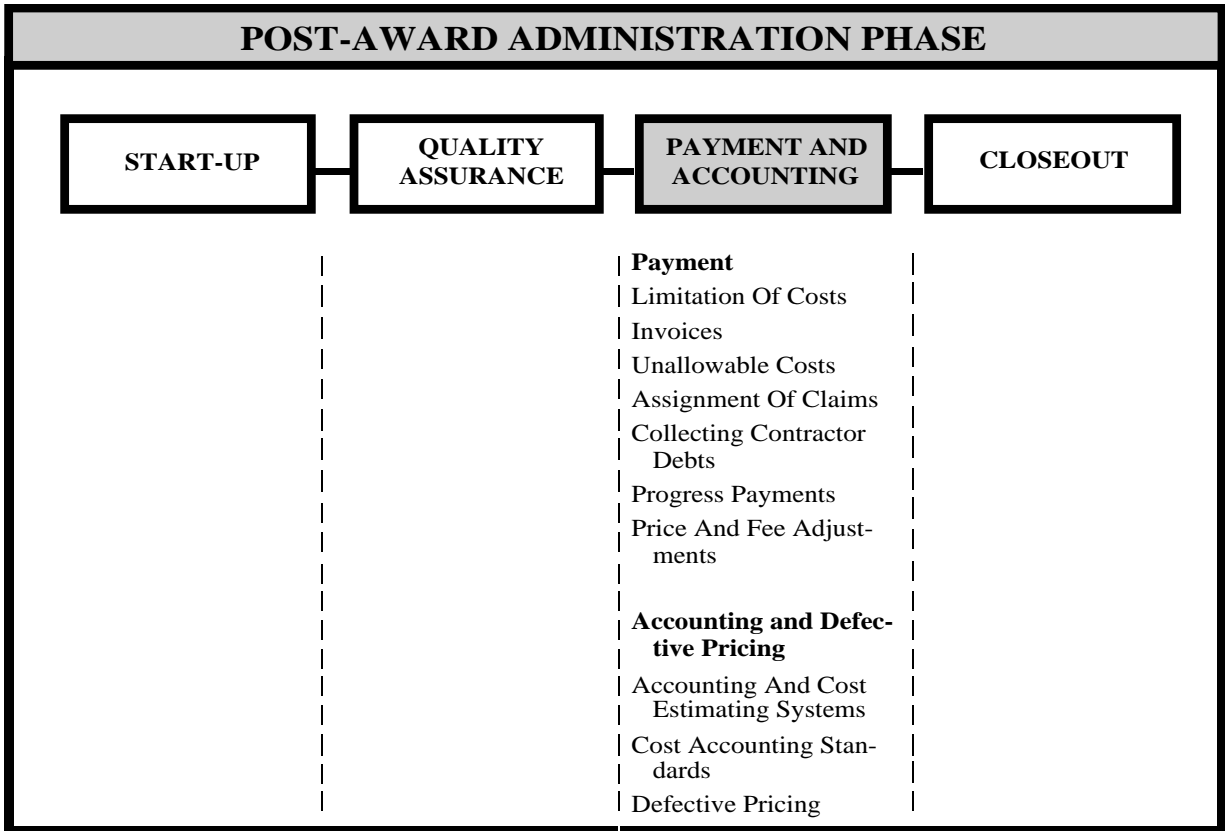


Exhibit 8-11. Payment and Accounting. (The Third Function of the Post-Award Administration Phase.)

CHAPTER 8

8.3.1 Payment

8.3.1.1 Limitation of Costs

FAR 32.704

- Identify types of contracts that limit costs, and the contractor's responsibility for notifying the CO that it is approaching the limit of funds allotted.
- State several specific actions that a CO may take in response to an indication that a contractor is approaching the funding limit.

Contract Types That Limit Costs

The Government uses cost-reimbursement, labor hour, or time and materials contracts when there are uncertainties about the work to be performed and, therefore, costs cannot be accurately estimated. Such contracts contain either a ceiling price or, in the case of cost type contracts, a total estimated cost (exclusive of fee). In performing the contract work, the contractor may only exceed the ceiling price or estimated cost at its own risk.

Notification Requirements

Under the terms of a cost reimbursement contract, the contractor is required to notify the CO when it is within 60 days of expending 75% of the total estimated cost of the contract. Time and materials and labor hour contracts similarly oblige the contractor to notify the CO when it is within 30 days of expending 85% of the ceiling price. In addition, the CO, or his or her representatives, independently monitor the contractor's cost performance against the total amount obligated for the work.

Options for Resolving Cost Overruns

If it appears that the contractor will be unable to complete the contract within the estimated cost or ceiling price, the CO, in cooperation with the requiring activity, must decide whether to:

- Reduce the scope of work to fit the remaining available funds.
- Let the contractor proceed under the current Statement of Work and funding, and when the funds are exhausted, obtain the fruits of the contractor's labors to that point.
- Negotiate a new estimated cost, obtain the additional funds, and modify the contract to permit continuation of the work until the work is complete or until the available funds are again exhausted (whichever comes first).

When a contract cannot be completed within the estimate and must receive additional funding, it is known as a "cost overrun."

8.3.1.2 Invoices

- State the CO's role in processing contractor invoices.
- Identify several types of withholdings and deductions that would reduce payments to contractors.

Processing Invoices

Contractors submit invoices for payment, based on:

- The contract price for work delivered and accepted,
- Costs incurred, or
- Progress made under the contract (e.g., percent of physical completion).

Invoices must be approved by the CO or a representative of the CO. The purpose of the approval process is to protect the interests of the Government by ensuring that payment (partial or total) is commensurate with the work performed.

Withholdings and Deductions

At times, the CO does not authorize payment in full of the invoiced amount. The following are among the many reasons for paying less than the amount invoiced:

- To reflect adjustments resulting from contract modifications.
- To take discounts for early payment.
- To resolve discrepancies between invoiced amounts and contract prices.
- To create a "set-off" fund for the collection of debts owed to the Government.
- To reflect invoiced items that have not been received or accepted.
- To avoid paying for unallowable costs.
- To retain a percentage of the fee, prior to the final invoice, as provided in cost reimbursable contracts.
- To liquidate progress payments.

Prompt Payment

The Government is also obliged to pay its bills promptly to avoid paying interest penalties to the contractor.

CHAPTER 8

8.3.1.3 Unallowable Costs

- State the factors to consider in determining whether a contractor's costs are allowable.
- Describe the CO's appropriate response to an invoice containing unallowable costs.

Factors in Determining the Allowability of Invoiced Costs

Cost-reimbursement type contracts provide for payments to contractors, based on costs incurred in performance of the contract—and an appropriate percentage of the fee—during the billing period. Costs claimed include direct costs (e.g., for labor and materials), indirect costs (e.g., overhead costs), and G&A (General and Administrative costs).

To be reimbursable, the costs that the contractor claims must be allowable. Exhibit 8-12 presents the factors used in determining whether costs are allowable.

Procedure for Disallowing Costs

Ordinarily, auditors render opinions on the allowability of invoiced costs. Based on audit findings, the CO issues a "Notice of Intent to Disallow Costs." The contractor has 60 days to respond in writing with evidence that the disputed costs are in fact allowable. Based on the contractor's response, the CO may choose to:

- Allow all of the disputed costs, if the contractor's evidence sustains their allowability.
- Allow part of the disputed costs, if the contractor's evidence sustains their allowability in part.
- Allow none of the disputed costs.

This decision is provided to the finance office, with instructions for paying the allowable costs (if any) on the invoice.

ALLOWABLE CONTRACTOR COSTS**FAR Part 31**

<i>Factor</i>	<i>The Question</i>	<i>Example</i>
Reasonableness	Is the cost reasonable, i.e., is it what would have been incurred by a prudent person in the conduct of competitive business?	Is the contractor billing the Government for rent on unoccupied, unneeded space?
Allocability	Is the Government paying its fair share of indirect costs for work under the contract?	Is the Government being charged for 100% of the shop foreman's salary, when in fact the shop foreman also supervised work under five other contracts during the billing period?
Accounting principles	Is the cost properly charged to the Government under Cost Accounting Standards or generally accepted accounting principles?	Per the "consistency" principle, has the contractor consistently included the costs of tooling in its manufacturing overhead pool from one billing period to the next?
Terms of the contract	May the invoiced cost be paid under the contract's terms and conditions?	The Government might not have to reimburse the contractor for costs in excess of the total estimated cost in the schedule for a cost reimbursable contract (as discussed in Section 8.3.1.1).
Limitations in FAR Part 31	Is the Government prohibited by Part 31 from paying the cost as invoiced?	The Government is prohibited by FAR 31.205-51 from paying for the costs of alcoholic beverages.

Exhibit 8-12. Reimbursable Contractor Costs.

CHAPTER 8

8.3.1.4 Assignment of Claims

FAR 32.8

- Describe the purpose and process for assigning claims.
- State some of the factors considered by COs in reviewing requests for assignment of claims.

Purpose and Description

Sometimes a contractor may need to borrow money to use in performing a contract. For example, the contractor might need money to purchase supplies, meet payroll, and pay other expenses, often well in advance of the receipt of payments from the Government.

The Assignment of Claims Act of 1940 permits a contractor to use its right to be paid by the Government for contract performance as security for a bank loan. Under an assignment, the lending institution makes a loan (or series of loans) to the contractor. The Government makes contract payments directly to the lending institution.

CO's Review and Determination

Before acknowledging an assignment, the CO must ensure, among other things, that the:

- Contract has been properly approved and executed.
- Contract permits assignment of claims.
- Assignment covers only money due or to become due under the contract.
- The assignment is to a bank, trust company, or other financing agency.
- The assignment has been properly executed.

Copies of the payment assignment are distributed to the:

- CO.
- Contractor.
- Lending institution.
- Disbursing Officer (of the office that will make payments under the contract).
- Surety on any bond applicable to the contract.

8.3.1.5 Collecting Contractor Debts

FAR 32.6

- State the different ways contractor debts can originate.
- Describe the principal methods used by the Government to collect contractor debts.

When Contractors Owe the Government

Usually it is the Government that owes money to the contractor. But it can be the reverse. A contractor may owe money to the Government for reasons such as:

- Assessment of liquidated damages.
- Damages or excess costs related to defaults (e.g., re-procurement costs).
- Overpayments resulting from discrepancies between the quantities billed vs. the quantities delivered.
- Government expenses for correcting latent defects in supplies furnished by the contractor.

When the CO or other responsible official learns of a debt, he or she collects the debt, including interest. Debt collection requires the cooperation of several Government officials including the CO, disbursing officials, and auditors.

Collecting Debts

Depending on the nature of the indebtedness and the financial condition of the contractor, the Government collects debts through:

- “Setoffs” against the contractor’s next invoice or invoices. The Disbursing Officer will make such “setoffs” as checks are written.
- Cash payments from the contractor, either for the full amount or on a deferred payment schedule.
- Applying tax credits that are due to the contractor against the debt.

CHAPTER 8

8.3.1.6 Progress Payments

FAR 32.5

- Describe the process for reviewing contractor requests for progress payments.
- Identify reasons for suspending or reducing progress payments or initiating alternate liquidation rates.

Monitoring Payments

Progress payments are a method of contract financing (see section 7.1.1.3). When progress payments are based on costs, contractor submit an invoice—a “Contractor's Request for Progress Payment” (SF 1443)—for costs incurred in the prior period (e.g, the prior month).

The progress payments clause at FAR 52.232-16 is not a blank check. For instance, the contractor may only invoice costs that are reasonable, allocable to the contract, and consistent with sound and generally accepted accounting principles. There are other restrictions on the types of costs and the total amount which may be invoiced.

The CO may request an audit of contractor's records with respect to progress payments. Among other reasons, audits may be necessary when the CO has concerns about:

- The contractor's accounting system and controls.
- The reliability or accuracy of the invoices.
- The possibility of default, when invoiced costs are out of line with the contract's price or the value of work performed to date.

Payment and Liquidation Rates

The rate of progress payments is established in the contract. Customarily, contractors are paid 80% of their cumulative total costs (85% for small businesses)—not to exceed 80% of the total contract price. When the contractor ships deliverables, prior progress payments are deducted (i.e., “liquidated”) from payments for the delivered units (up to a maximum of 80% of the price of the delivered units).

Adjusting the Rates

There is a certain amount of risk in providing up-front money to a contractor prior to receiving the deliverables. For example, there is always the risk that a contractor will go bankrupt before completing the work. Hence, the CO may suspend or reduce progress payments (or raise the liquidation rate) if the CO believes that the contractor is:

- Being over-reimbursed.
- Failing to make progress.
- On the verge of bankruptcy.
- Delinquent in payment of its suppliers.

POST-AWARD ADMINISTRATION PHASE

- Refusing access to its books.
- Otherwise putting the Government at unreasonable risk under the circumstances specified in the progress payments clause.

The contractor may also be at risk if the amount of progress payments is not sufficient to cover major start-up costs. In that case, the CO (with higher-level approval) may choose to grant an “unusual” progress payment rate (i.e., a rate higher than 80% of incurred costs) or reduce the liquidation rate.

8.3.1.7 Price and Fee Adjustment

- List various types of price and fee adjustments.

FAR 16.2 & 16.4

Contracts may contain a clause with a formula for adjusting the fee or price for the work performed.

TYPES OF PRICE AND FEE ADJUSTMENTS

- Economic price adjustments.
- Addition of an “award fee” to the base price or fee of a fixed-price or cost plus award fee contract.
- Establishment of the final price of a fixed-price incentive contract or final fee of a cost plus incentive fee contract.
- Prospective or retroactive redetermination of the negotiated price under a price redetermination contract.

Exhibit 8-13. Types of Price and Fee Adjustments.

To apply the formula for adjusting the fee or price, COs may consult auditors, technical personnel, or other agency personnel. For example, requirements managers often participate on panels that recommend the amount of the award fee. Other than in award fee contracts, contractors generally have the right to present their views on the application of the formula. Afterwards, COs modify the contract to reflect their final determination on the price or fee to be paid under the contract.

8.3.2 Accounting/Defective Pricing

8.3.2.1 Accounting and Cost Estimating Systems

- State when it is necessary to review and accept a contractor's accounting system.
- State when it is appropriate to review the acceptability of a contractor's cost estimating system.

Accounting Systems

FAR 52.215-2

The CO ensures that the contractor has an acceptable accounting system before awarding contracts for which the Government requires data on actual incurred costs. To confirm amounts claimed by the contractor as incurred costs, the contractor's accounting system must provide an accurate and complete "audit trail" for Government auditors and the CO.

Estimating Systems

FAR 15.811

In addition, the Government may periodically review a contractor's estimating system. This is especially appropriate when that contractor will be generating a significant number of proposals for large negotiated contracts. One critical concern is whether the contractor estimates costs on the same basis that it accounts for costs. If a contractor has an accurate estimating system, it enhances the reliability of individual proposals and it expedites the negotiation process.

Both types of reviews are normally accomplished by the cognizant audit and contract administration offices. The CO may request either type of review (or both).

8.3.2.2 Cost Accounting Standards

FAR Part 30

- Define the term CAS Disclosure Statements (CAS/DS).
- Describe situations which CAS/DS are required.

The Government has issued a series of Cost Accounting Standards (CAS). These standards are meant to achieve uniformity in cost accounting practices and procedures among Government contractors.

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Exclusions

Cost Accounting Standards do not apply to all Government contracts. For example, CAS compliance is not required for the following types of contracts, among others (see FAR 30.201-1 for the full list):

FAR 30.201-1

- Sealed Bid contracts.
- Negotiated contracts and subcontracts at \$100,000 or less.
- Contracts and subcontracts with small businesses.
- Contracts and subcontracts for which the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.
- Contracts and subcontracts of \$500,000 or less if the business unit is not currently performing any national defense CAS-covered contracts.
- Nondefense contracts and subcontracts of business units that are not currently performing any CAS-covered national defense contracts.
- Nondefense contracts awarded on the basis of adequate price competition.

Full vs. Modified Coverage

In addition, some business entities may not be subject to “full” CAS coverage but only to “modified” coverage. Only a few of the Standards in Part 30 apply when the coverage is “modified.” Full coverage may be required only if the entity has:

FAR 30.201-2

- Received a single national defense CAS-covered contract award of \$10 million or more, or
- Received \$10 million or more in national defense CAS-covered contract awards during its preceding cost accounting period, or
- Received less than \$10 million in national defense CAS-covered contract awards during its preceding cost accounting period but such awards were 10% or more of total sales.

Disclosure Statements

When the contractor’s accounting system is covered by CAS, the contractor submits disclosure statements as provided in the contract. A disclosure statement is a written description of the contractor’s cost accounting practices and procedures. The Government checks the disclosure statement to ensure that:

- The statement adequately represents the contractor’s actual accounting practices.
- The disclosed accounting practices conform to the CAS.

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Cost Impact Adjustments

When contractors change accounting practices to conform with the CAS, or for other reasons, COs determine the impact of the accounting changes on any affected contracts and, where necessary, negotiate adjustments in their prices.

8.3.2.3 Defective Pricing

FAR 15.804-7

- State circumstances that are likely to suggest that contractor cost or pricing data may be invalid.
- State the action that the CO should take if defective pricing is discovered, either before or after award.
- State the applicability of a Certificate of Commercial Pricing.

Defective Cost or Pricing Data

When required (as discussed in section 7.3.1.4), CO's obtain cost or pricing data from offerors or, with respect to contract modifications, from contractors. The contractor ordinarily certifies that the data are accurate, current, and complete as of the date of the final agreement on price.

Later, the Government may discover that the data were defective in some respect. Some potential tipoffs:

- For no apparent reason, data submitted as part of an ongoing negotiation differ significantly from data submitted in earlier negotiations .
- Invoiced costs are substantially lower than estimated.
- Market data are not consistent with submitted data.
- Audits of the firm's estimating or accounting system have raised general questions about the firm's data submissions.
- After submitting certified data from an intended subcontractor, the prime has either assigned the work to a different subcontractor or brought the work inhouse.

Audit and Analysis of the Data

Such indicators may prompt the CO to request an audit of the certified data. If the auditor finds that some or all of the data were inaccurate, incomplete, or not current, the CO must determine whether the defective data had (1) been relied on by the Government's representatives during negotiations and (2) had a significant effect on price or cost.

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If the defective data had mislead the CO into overestimating the cost of performing the contract, the Government is entitled to a commensurate reduction in the contract price and interest on any overpayments.

Certificates of Commercial Pricing

FAR 15.813-4

Similarly, if after award the CO suspects that commercial prices offered and supported by a “Certification of Commercial Pricing” were defective, the CO may request an audit. If the CO determines that the certificate was inaccurate, incomplete, or misleading, the Government is entitled to a price adjustment for the overcharge.

8.4 CLOSEOUT

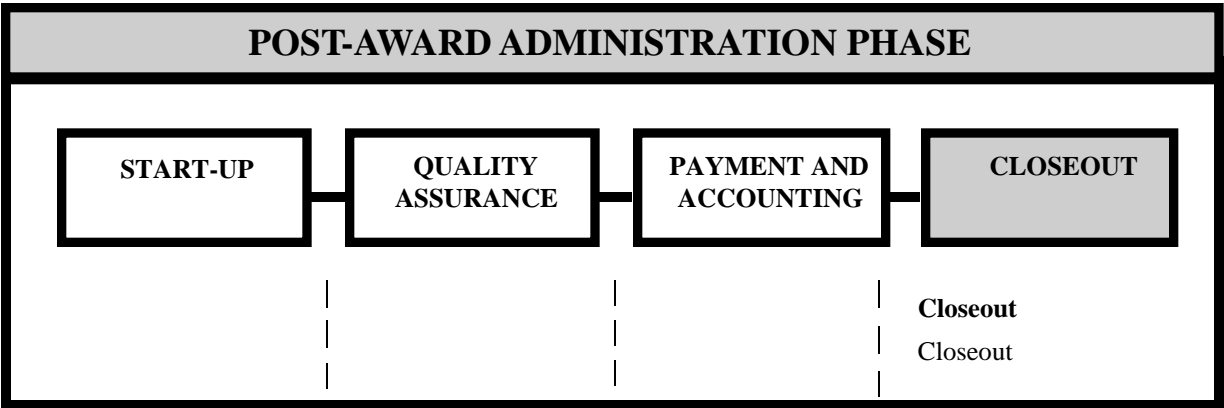


Exhibit 8-14. Closeout. (The Fourth Function of the Post-Award Administration Phase.)

8.4.1 Closeout

- State eight typical steps in contract closeout.

Purpose

FAR 4.804 & 4.805

A contract concludes when all deliverables have been accepted, the contractor has been paid, and the contract’s other terms and conditions have been satisfied. A contract must be closed out administratively to ensure that in fact all contractual obligations have been met by both parties, and that government interests are protected.

The CO often relies on other personnel to help determine that the contract is ready for closeout. For example:

- A **Property Administrator** may be responsible for certifying that all Government-furnished property has been either returned or accounted for.
- The **Requiring Activity** may be responsible for confirming that any final reports required have been received.
- The **Office of Counsel** may be responsible for confirming that any required patent statements have been filed, etc.

Exhibit 8-15 lists eight general steps in closing out a contract.

EIGHT STEPS OF CONTRACT CLOSEOUT

FAR 4.8

1. Verify that the contract is physically complete (e.g., that all required supplies have been delivered, inspected, and accepted).
2. Obtain forms, reports, and clearances, such as:
 - The contractor's final invoice.
 - The contractor's closing statement and/or release of claims.
 - Plant clearance report.
3. Verify that the Government and the contractor have satisfied other terms and conditions for closeout, such as:
 - Return or other disposition of Government property.
 - Disposition of classified material.
4. Settle any outstanding issues, such as:
 - Disallowed costs.
 - The final price or fee of an incentive contract.
 - The award amount of an award fee contract.
5. Verify that there are no outstanding claims or disputes.
6. Make final payment and deobligate remaining funds, if any.
7. Prepare a contract completion statement and, based on the retention schedules in FAR 4.805, provide for the disposal of files.
8. Determine whether to invoke phase-in/phase-out rights under the "Continuity of Services" clause (FAR 52.237-3).

Exhibit 8-15. Eight Steps of Contract Closeout.



CHAPTER 9

MODIFICATIONS, TERMINATIONS, AND CLAIMS

POST-AWARD ADMINISTRATION			SPECIALITIES
CONTRACT MODIFICATION	TERMINATION	CLAIMS	SPECIALIZED AREAS
Modifications/Options Contract Modifications A. Contract Modifications B. Exercising Options	Termination Termination A. Determine whether to terminate for convenience or default B. Terminating for convenience C. Terminating for default Bonds (administering bonds)	Claims Claims	ADP/Telecommunications Construction A&E Systems Procurement Simplified Purchasing Real Property Leasing

Exhibit 9-1. Modifications, Terminations, and Claims.

Learning Objectives

The learning objectives for this chapter are located at the front of the section or subsection to which they apply and are highlighted with grey shading. After completion of this chapter, you will be expected to know all the highlighted learning objectives for this chapter.

Exhibit 9-2. Learning Objectives.

CHAPTER INTRODUCTION

The post-award functions in this chapter involve changes in the rights and responsibilities of the parties as a consequence of contract modifications, terminations for convenience, or terminations for default. In addition, this chapter covers disputes over the terms and conditions of the contract.

9.1 CONTRACT MODIFICATION

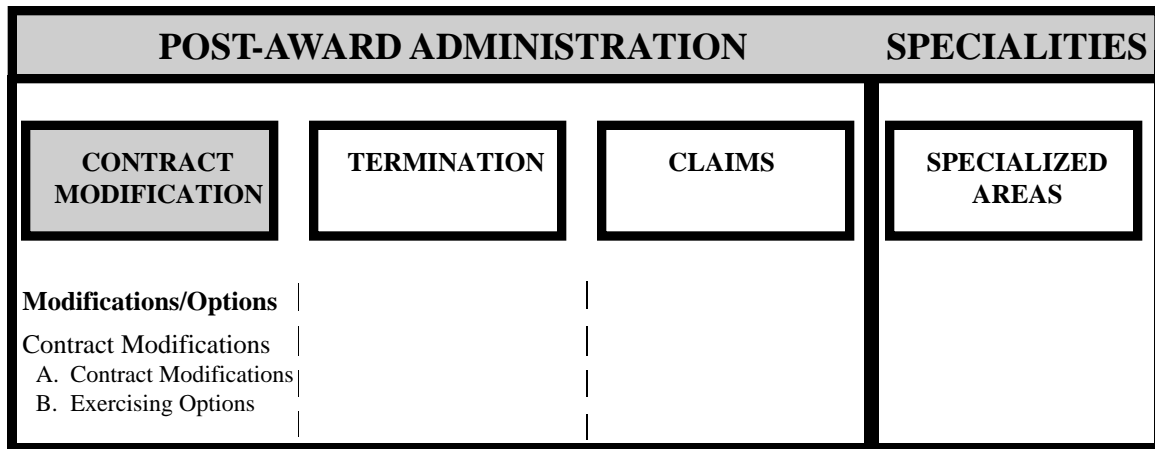


Exhibit 9-3. Contract Modification.

9.1.1 Modifications and Options

FAR Part 43

- Define contract modification.
- Distinguish unilateral from bilateral modifications.
- Explain “scope of work” as a constraint on the CO's ability to modify a contract.
- Describe the process for exercising options.

A contract modification is any written change in the terms of a contract. A modification may be either “unilateral” or “bilateral.”

Unilateral Modifications Unilateral modifications are issued and signed by the CO. Unilateral modifications are used for making:

- Administrative changes that do not affect the substance or price of the contract (e.g., changing the address of the payment office).
- Substantive changes that result in equitable adjustments in the contract price, delivery schedule, or both.

Examples of clauses in contracts that authorize unilateral modifications:

- Changes.
- Government Property.
- Option for Increased Quantity.

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Equitable Adjustments	If a change order affects the contractor's costs or ability to meet the delivery schedule, the parties attempt to reach a bilateral agreement on an equitable adjustment in the contract's price and delivery terms. If an agreement cannot be reached, the CO unilaterally determines the amount. The contractor may then file a claim for the amount in dispute (see section 9.3).
Bilateral Modifications	<p>Bilateral modifications (i.e., supplemental agreements) are negotiated and signed by both the CO and an agent of the contractor. A bilateral modification may be issued:</p> <ul style="list-style-type: none">• To modify the terms of a contract that may not be unilaterally changed by the CO.• In place of a unilateral modification when both parties negotiate and agree to the equitable adjustment prior to effecting the change.• To incorporate an agreement on an equitable adjustment in price and other contract terms after issuance of a unilateral change.
Scope of Work	Generally, neither bilateral nor unilateral modifications may change the scope of work in a contract (although a bilateral change in scope may be proper when FAOC is not required for the additional work). Determining what changes are within the scope of the contract is a matter of judgement. The general rule is that scope of work circumscribes the intentions of the parties at the time of contract award. For example, a contract to fabricate and deliver office furniture cannot be modified to also provide for furnishing and installing microcomputers.

To Change or Not to Change

If the Livingston's wish to change the design of the house, they may negotiate a bilateral contract modification with the builder. The modification would incorporate the changes in specifications and also make any agreed upon corresponding changes in price or time for completion. While the Livingston's and the builder might verbally agree to some minor changes, any changes of substance should be in writing and signed by both parties.

Exercising an Option	Contracts often contain options for increasing the quantity being supplied to the Government. For example, a contract may provide for the delivery of 1,000 gargoyles at a specified price of \$8,000 per unit by March 30. The contract may also contain an option to supply an additional 500 units
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FAR 17.2

MODIFICATIONS, TERMINATIONS, AND CLAIMS

at \$10,000 per unit by that same date, provided the option is exercised by January 1. If the Government needs the additional units, the CO can exercise the option unilaterally. However, before exercising the option, the CO must determine that:

- The additional quantity would meet an existing need.
- Funds are available to exercise the option.
- Exercising the option would be the best alternative for meeting the need, based either on a formal solicitation or on market research.

Note that service contracts also may include an option for extending the period of performance.

9.2 TERMINATION

POST-AWARD ADMINISTRATION			SPECIALITIES
CONTRACT MODIFICATION	TERMINATION	CLAIMS	SPECIALIZED AREAS
	Termination Termination A. Determine whether to terminate for convenience or default B. Terminating for convenience C. Terminating for default Bonds (administering bonds)		

Exhibit 9-4. Termination.

A contract is entered into because the Government has a need to fulfill and the contractor agrees to fulfill it in return for specific compensation. The Government reserves the right to get out of a contract, in prescribed circumstances, by including termination clauses in its contracts. Generally, commercial contracts do not contain such clauses and instead are terminated through mutual agreement or through legal action under the Uniform Commercial Code.

9.2.1 Termination

FAR Part 49

- State circumstances that may signal the need for terminating a contract.
- Name the two major classes of termination actions.

In its contracts, the Government reserves the right to terminate (discontinue/halt) contract performance.

REASONS FOR TERMINATING CONTRACTS

- The Government's requirement has substantially changed or has been cancelled.
- The contractor fails, or is failing, to perform as required by the contract.

Exhibit 9-5. Reasons for Terminating Contracts.

Termination for Convenience

When the Government's requirement has changed substantially or been cancelled, the CO may exercise the Government's right to terminate the work as provided in the "Termination for Convenience of the Government" (T for C) clause. For example, suppose the contract is for one year of janitorial services. A few months after the contract starts, the agency relocates and the janitorial services are no longer required. The CO issues a unilateral notice terminating the remainder of the contract for the convenience of the Government. That action will usually be followed by a bilateral supplemental agreement reflecting the resulting change in price, disposition of property, etc.

Termination for Default

When the contractor is failing to perform, the CO may exercise the Government's right to terminate the work, in whole or in part, as provided in the "Default" clause (T for D) of the contract. For example, suppose a contractor is unable to secure the needed personnel and cannot perform the work of a fixed price contract. The CO may terminate the contract for default, secure services from another source, and bill the terminated contractor for the excess costs of reprocurement.

When the Government has sufficient evidence to suspect that delivery or other performance requirements are not likely to be met, the CO may choose to immediately take action rather than wait for the contract's delivery date. In these cases, the CO issues a "cure notice" if the time remaining in the contract delivery schedule is sufficient to permit a

MODIFICATIONS, TERMINATIONS, AND CLAIMS

“realistic” cure period of 10 days or more. If the cure notice fails to remedy the problem, then termination for default proceeds forthwith. If, on the other hand, the delivery date has arrived, the CO may issue a “show cause” letter or immediately initiate a default termination.

All contracts have a Termination for Convenience clause, but not all contracts have a Default clause. For example, cost-reimbursement R&D contracts with educational institutions do not have a Default clause.

Termination Issues

Terminations are often complicated, so much so that some agencies have even appointed Termination CO's to manage terminations and negotiate settlements on a full-time basis. Terminations are particularly complicated in production contracts when some work has been completed, some work is in progress, and materials have been purchased for work not started. For instance, some of the issues that might be discussed with the contractor when terminating include:

- Extent of the termination, the point at which the work stopped, and the Government's specific instructions for terminating the work.
- Terminating subcontracts.
- The termination inventory.
- Title transfer and delivery schedule for completed supplies and for manufacturing materials (e.g., partially completed supplies and materials, parts, tools, dies, jigs, etc.).
- Status of plans, drawings, and data that would have been delivered under the completed contract.
- Protection and preservation of any property in the Contractor's possession in which the Government has an interest.
- Preparation and submission of settlement proposals, including any related requirement for certified cost or pricing data.
- Any counterproposal by the contractor to continue work under the contract.

9.2.2 Bond Administration

- List five events in administering bonds.

FAR 49.402-3, 49.404,
& 49.405

In section 7.1.1.5, you learned when to require the submission of bonds by a contractor. When administering contracts, the CO must ensure that the contractor maintains all bonds required by the contract and secures new bonds, when appropriate. Examples of situations that might call for special action on the part of the CO are shown in Exhibit 9-6.

SELECTED EVENTS IN ADMINISTERING BONDS	
Situation	CO's Action
Surety disqualified.	Ensure contractor obtains a new bond from another surety.
Surety requests information on the contractor's progress, payments, and/or estimated percentage of completion on the contract.	Furnish information.
Subcontractor or supplier, who has furnished or been requested to furnish labor and material, asks for name and address of surety given on payment bond.	Furnish information.
Option exercised.	Require a modified bond to reflect the change in the dollar amount, time period, or both.
Contract terminated for default.	Determine whether (1) the surety will arrange for performance or whether (2) the Government will reprocur at the surety's expense, to the extent the surety is liable for reprocurement costs.

Exhibit 9-6. Selected Events In Administering Bonds.

9.3 CLAIMS

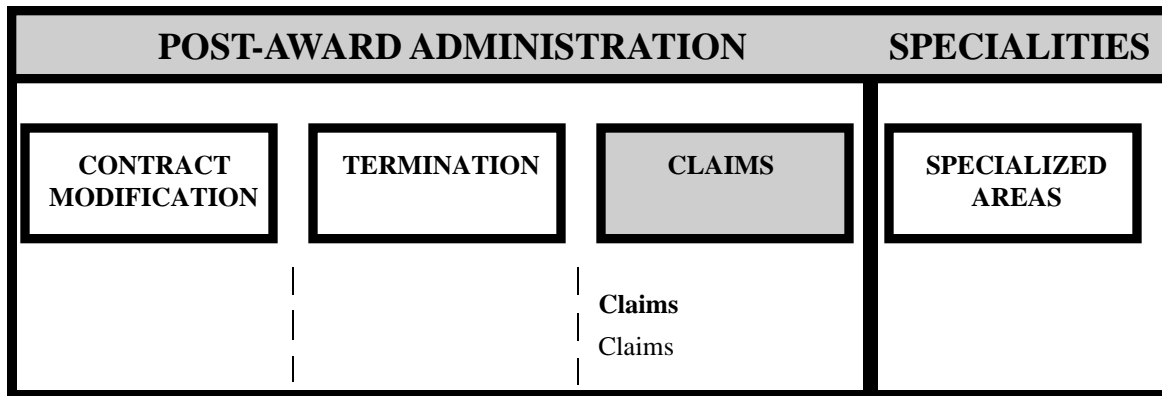


Exhibit 9-7. Claims.

FAR 33.2

- Define the term “claim.”
- Describe the procedures for determining the validity of a claim made by a contractor.
- State how claims are handled; who decides; what are the rights of contractors when disputes arise.

Definition

A claim is a written demand or written assertion by a contractor (or the Government) that it is entitled to:

- Additional money “in a sum certain”.
- Adjustment of contract terms (e.g., the delivery schedule) or a more favorable interpretation of the terms.
- Other relief arising under or related to the contract.

For example, suppose a CO unilaterally orders that widgets be painted with two coats of paint, instead of the one coat specified in the contract. The contractor would have to apply the extra coat. However, the contractor may request (i.e., claim) \$5,000 for the extra coat of paint over and above the original price of the contract. To constitute a claim, the contractor must submit the request for payment in writing to the CO. If the claim exceeds \$50,000, the contractor must also submit a certificate that:

CHAPTER 9

1. The claim is made in good faith;
2. Supporting data are accurate and complete to the best of the contractor's knowledge and belief; and
3. The amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.

CO's Response to the Claim

Upon receiving a claim, the CO may take the following steps:

1. Research the claim and prepare a finding of facts. Among other things, the CO may ascertain whether the claim is:
 - Timely?
 - Covered by an existing release of claims?
 - Barred by the contract clause at issue (e.g., clause at 52.219-10, which states that the determinations thereunder are not subject to the Disputes clause)?
 - Supported by sufficient, accurate, and complete data?
 - Factually correct?
 - Correct in its interpretation of the terms and conditions at issue and related case law?
2. Prepare the Government's initial position on the claim and on the amount of any equitable adjustment in price or other terms.
3. Discuss the claim with the contractor and try to reach a mutual agreement. For this purpose, COs are being encouraged to use any authorized, applicable Alternative Dispute Resolution procedure (such as mediation, arbitration, and minitrials, among others).¹
4. Prepare a decision on the claim, issue the decision in writing to the contractor, and initiate payment (if any).

In working through these steps, the CO generally draws on the advice and expertise of technical, audit, and legal office personnel.

In the case of the \$5,000 claim for the extra coat of paint, the CO may conclude that the contractor is entitled to an equitable adjustment in price but that the price should be increased by only \$3,800. If the two parties cannot negotiate a mutually agreeable settlement, the CO will render a final decision to only pay the contractor the lesser of the two amounts.

The Contractor's Appeal Rights

If the contractor disagrees with the CO's decision, the contractor may appeal the decision to the cognizant Board of Contract Appeals or to the courts.

¹ FAC 90-10.

9.4 SPECIALIZED AREAS

POST-AWARD ADMINISTRATION			SPECIALITIES
CONTRACT MODIFICATION	TERMINATION	CLAIMS	<div>SPECIALIZED AREAS</div> <div>ADP/Telecommunica- tions</div> <div>Construction</div> <div>A&E</div> <div>Systems Procurement</div> <div>Simplified Purchasing</div> <div>Real Property Leasing</div>

Exhibit 9-8. Specialized Areas.

There are categories of contracting (see Exhibit 9-9) that may require the use of procedures that supplement those discussed in the preceding chapters of this text.

SPECIAL CONTRACTING CATEGORIES

ADP/Telecommunications	FAR Part 39 and the Federal Information Management Regulation (41 CFR 201).
Construction	FAR Part 36
Architect - Engineer (A&E) Services	FAR Part 36
Major System Acquisition	FAR Part 34 and OMB Circular A-109
Small Purchases and Other Simplified Purchase Procedures	FAR Part 13
Real Property Leasing	Federal Property Management Regulation (41 CFR 101-18)

Exhibit 9-9. Special Contracting Categories.

Each of these six categories requires special attention. Some of the categories are the subject of special courses. The six special categories of contracting are described in more detail below.

- **ADP/Telecommunications.** Certain ADP procurements must be approved by the GSA as prescribed in FIRMR. However, certain DoD requirements are excluded from GSA approval authority (i.e., “embedded” ADPE and operational support ADPE related to missions and national security).
- **Construction.** Construction contracts typically include unique terms and conditions for such matters as:
 - Bonding.
 - Liquidated damages.
 - Permits.
 - Protection and clean-up of sites.
 - Utility services.
 - Progress payments based on percentage of completion.

Special and optional contracting forms are used, and special or alternate versions of clauses are numerous.

- **Architect - Engineer (A-E) Contracts.** Special procedures apply to the selection of A-E sources for award. Moreover, A&E contracts are also distinguished by unique forms and clauses.
- **Major System Acquisition.** “Major System” means a combination of elements that function together to produce the capabilities required to fulfill a mission’s need. The system may include hardware, equipment, and software. To be “major,” a system must meet the following criteria:
 - **DoD.** Total expenditures for research, development, test, and evaluation of the system are estimated to be more than \$75 million; or the total eventual expenditure, more than \$300 million (based on FY 80 constant dollars).
 - **Civilian Agencies.** Total expenditures for the system are estimated to exceed \$750,000 (based on FY 80 constant dollars) or exceed the dollar level established by the agency pursuant to Office of Management and Budget (OMB) Circular A-109, “Major System Acquisitions.”

In both DoD and civilian agencies, the Head of the Agency may designate any system a “major system.” Major system acquisitions are subject to the special planning and control procedures in OMB Circular A-109.

- **Small Purchases and Other Simplified Purchase Procedures.** These procedures are vastly different from conventional sealed bidding and negotiation procedures. Small purchases may be placed through:
 - Purchase orders.
 - Calls against blanket purchase agreements.
 - Imprest fund transactions.
- **Real Property Leasing.** The FAR does not prescribe guidelines for the leasing of real property. Instead, such guidance is provided in the Federal Property Management Regulation (FPMR), the General Services Acquisition Regulation (GSAR), and the specific statutes that authorize the leasing of real property.

CHAPTER 10

STANDARDS OF CONDUCT



"All I did was give a friend of mine some information
on a competitor's proposal."

Learning Objectives

- 10-1 Identify standards of conduct that apply to the procurement process.
- 10-2 Provide examples of activities that are prohibited under each standard.

Exhibit 10-1. Learning Objectives.

CHAPTER INTRODUCTION

The public expects Government operations of all kinds to be open, honest, and fair-dealing. This is especially true relative to procurement. There are two principal reasons for this public concern:

- Public interest in how their money is spent — around \$200 billion per year on Government contracts.
- Concern among those competing for Government contracts about the integrity of the process.

You will probably see much material and hear many briefings or presentations pertaining to the broad area of ethics in Government contracting. Some of the material is redundant and may be addressed under titles such as:

- Standards of Conduct.
- Ethics.
- Conflicts of Interest.
- Improper Business Practices.

This chapter summarizes the FAR coverage of the subject, especially as contained in Part 3. Be sure that you consult regulations within your agency for more specific guidance.

10.1 STANDARDS OF CONDUCT (GENERAL)

Government officials involved in the expenditure of public funds have positions of trust and grave responsibility that require the observance of the highest ethical standards. Such officials must:

- Earn the highest degree of public trust.
- Display impeccable standards of conduct.

The resulting standards state that Government business shall be conducted in a manner beyond reproach. Except as authorized by the statute or regulations; they shall be conducted with:

- Complete impartiality.
- Preferential treatment to none.

The caveat “except as authorized by statute or regulation” refers to such preferential programs as small and small/disadvantaged business set asides.

To achieve those standards, the regulation requires that you, in your Government-contractor relationships:

- Avoid any conflict of interest.
- Avoid the appearance of any conflict of interest.
- Conduct yourself so that you would have no reluctance to make a full public disclosure of your actions.

The violation of the standards of conduct may result in fines, imprisonment, dismissal, debarment, or other penalties.

EXECUTIVE ORDER 11222

“STANDARD OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES”

POLICY

“Where Government is based on consent of the governed, every citizen is entitled to have complete confidence in the integrity of his Government. Each individual officer, employee or advisor of Government must help to earn and must honor that trust by his own integrity and conduct in all official actions.”

10.2 STANDARDS OF CONDUCT (GOVERNMENT PERSONNEL)

Generally, a Government official or employee must avoid any action which might result in, or create the appearance of:

- Using public office for private gain.
- Giving preferential treatment to any person.
- Impeding Government efficiency or economy.
- Losing complete independence or impartiality.
- Making a Government decision outside official channels.
- Affecting adversely the confidence of the public in the integrity of the Government.
- Disclosing proprietary or source selection information to unauthorized sources.

These standards apply to all Government personnel, with special emphasis on those persons involved in the acquisition process, including:

- Contracting personnel.
- Technical and engineering personnel
- Financial personnel
- Clerical, support and administrative personnel
- Program/project managers and agency management
- Contract support personnel
- Anyone else who: (1) determines requirements, (2) evaluates technical proposals, or (3) prepares specifications

The Federal Acquisition Regulation and Title 18 of the United States Code specifically prohibit certain types of conduct by Federal employees. Exhibit 10-3 lists some of those prohibitions.

PROHIBITED CONDUCT

- Bribes
- Representing contractors
- Making or recommending official decisions in which you have a financial interest
- Conspiring to defraud the Government
- False statements and cover-ups
- Disclosing source selection or proprietary information
- Contracting with Government employees
- Contracting with Members of Congress

Exhibit 10-3. Prohibited Conduct.

10.2.1 Bribes

FAR 3.101-1

Do not solicit or accept any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who:

- Has or is seeking Government business with your agency.
- Conducts activities that are regulated by your agency (e.g., FCC, FAA, EPA).
- Has interests that may be substantially affected by your performance or nonperformance of your official duties.

Policies vary from one agency to another on whether you may accept items of "nominal" value. Prior to accepting any such item, check your agency's individual regulations on standards of conduct. Even where your agency's regulations might be construed to permit receipt of the item, you still would be best advised to refrain from accepting the item.

Also note that, under 18 USC § 201, it is a criminal offense for a public official to directly or indirectly corruptly seek, receive, or agree to accept, anything of value personally in return for:

- Being influenced in an official act.
- Committing or allowing fraud.
- Violating his/her lawful duty.

Penalty: Fine of not more than 3 times the value of the bribe, or imprisonment of not more than 5 years, or both; may also be disqualified from holding office or position of trust or profit with the United States.

That same statute also makes it a criminal offense for such a public official to directly or indirectly seek, receive, or agree to accept anything of value personally for, or because of, any official act performed or to be performed. The only exception are payments authorized by law, such as application or filing fees.

Penalty: Fine of not more than 3 times the value of the illegal gratuity, or imprisonment of not more than 2 years, or both.

10.2.2 Representing Contractors

Per 18 USC § 205, do not act on behalf of a party in any matter, including a claim or contract, in which the United States has an interest. This prohibition extends to matters before any agency or tribunal.

Penalty: Fine of not more than \$10,000, imprisonment of not more than 2 years or both.

Also, per 18 USC § 207, do not take a position with a contractor and then represent that contractor:

- On any matter in which you had personally and substantially participated as a Government official
- On matters that were under your official responsibility during your last year of Federal service (within two years after leaving the Government)

10.2.3 Official Decisions In Which You Have A Financial Interest

Per 18 USC § 208, do not participate personally and substantially in a particular matter in which any of the following have a financial interest:

- You.
- Your spouse.
- Your minor child.
- Your partner.
- An organization in which you are serving as officer, director, trustee, partner, or employee.
- A person or organization with whom you are negotiating for prospective employment.

This restriction may be waived by the appointing official if the financial interest is found to have no affect on the integrity of your services.

Penalty: A fine of not more than \$10,000 or imprisonment of not more than 2 years, or both.

10.2.4 Conspiring to Defraud the Government

Per 18 USC § 286, do not enter into any agreement or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim.

Penalty: Fine of not more than \$10,000 or imprisonment of not more than 10 years or both.

In addition, 18 USC § 371 more generally prohibits any conspiracy by two or more persons to commit any offense against the United States, or to defraud the United States or any agency thereof.

Penalty: Each person who acts to effect the conspiracy will be fined not more than \$10,000 or imprisoned not more than 5 years or both; unless the offense which is the object of the conspiracy is a misdemeanor, then the punishment shall not exceed the maximum punishment provided for such misdemeanor.

10.2.5 False Statements and Cover-Ups

Per 18 USC § 1001, do not falsify, conceal or cover-up by any trick, scheme, or device material fact, statements or representations or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

Penalty: Fine of not more than \$10,000 or imprisonment of not more than 5 years or both.

10.2.6 Disclosing Source Selection or Proprietary Information

Make no unauthorized disclosures of:

- A contractor's proprietary information.
- Government source selection information.

An overriding general rule is that a Government employee shall not release information to any one source that would give that source an unfair competitive advantage over another source. What may be disclosed varies from phase to phase of the acquisition process.

The following is a summary of what may be disclosed during each phase.

Presolicitation Phase

FAR 14.211 and 15.402(b)

Do not disclose any information on a proposed procurement or future solicitation to any prospective contractor or to any other unauthorized party, except through:

- Release of long-range acquisition estimates (FAR 5.404).
- CBD synopses (FAR 5.201).
- Presolicitation notices prepared by the CO and synopsized (FAR 14.205-4(c) and 15.404) .
- Presolicitation conferences conducted by the CO (FAR 15.404).
- Solicitations for information or planning purposes issued by the CO (FAR 15.405).

CHAPTER 10

Solicitation Phase (Prior to Evaluating Offers)

FAR 14.211, 15.411,
15.413, 52.214-6, &
52.215-14

- Only the CO, the CO's superiors, or others specifically authorized may discuss the solicitation with competing contractors.
- Only the CO, CO's superiors, or others specifically authorized may transmit technical or other information on the solicitation to competing contractors.
- Instruct offerors to put their questions in writing and do it early, as provided in 52.214-6 and 52.215-14.
- Do not disclose information that would afford one competing contractor an advantage over others. Among other things:
 - Before bid opening, do not disclose the number or identity of bids received.
 - In negotiated procurements, do not disclose the identity of any offeror or the number of offers received.
- Furnish only general information upon request that would not be prejudicial to other competing contractors. Otherwise, amend the solicitation.

Evaluation/Award Phase

FAR 14.402,
14.404-4, 15.413,
& 15.610(d)

In sealed bidding:

- Bids may be examined by the public (after bid opening).
- Bidders may restrict public disclosure of descriptive literature.

However, a restriction may render a bid nonresponsive under the conditions prescribed in FAR 14.404-4.

In negotiated procurements:

- Offerors may restrict disclosure or use of data in proposals.
- Do not disclose the contents of any offer to the public or other offerors.
- Only the CO, CO's superiors, or others specifically authorized may exchange data with offerors and talk to contractors.

Post-Award Phase

FAR 15.103(b)

When debriefing unsuccessful offerors, do not disclose the:

- Relative merits or technical standings of competitors.
- Evaluation scoring.
- Information not releasable under Freedom of Information Act (FOIA).

All Phases

FAR 9.105-3

Do not disclose information on an offeror's responsibility, except as provided in the FOIA.

In addition to these FAR provisions on disclosure, 18 USC § 1905 forbids publishing, disclosing, allowing to be seen or examined, or the making known in any manner or to any extent not authorized by law any information obtained in the course of employment or official duties by reason of examination, investigation, report, or record filed with the officer or employee's agency that concerns or relates to trade secrets, operations, data, sources of income, profits, losses or expenditures, including books and abstracts of such data of any person, firm, partnership, association or corporation.

Penalty: A fine of not more than \$1,000, imprisonment of not more than 1 year, or both, and removal from office or employment.

10.2.7 Contracting With Government Employees

Do not knowingly award a contract to a:

FAR 3.6

- Government employee
- Business concern or other organization owned or substantially owned or controlled by one or more Government employees

The head of an agency or HCA may authorize an exception only if there is a compelling reason to do so.

10.2.8 Contracting with Members of Congress

FAR 3.102

As provided in FAR 3.102, do not award a contract when any member of Congress (or any delegate to Congress or resident commissioner) would have any share or part of the contract or any benefit arising from it."

EXCERPTS FROM A TYPICAL AGENCY PENALTY GUIDE

<u>Type of Misconduct</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
Engaging in outside employment without prior written approval:			
a. no conflict present	Warning	Reprimand	Suspended/ Removal
b. conflict present	Reprimand/	Removal	_____
Knowing and willful misstatement or omission of material facts from official documents, contract files, or records.	Reprimand/	Removal	_____
Knowing and willful use of public office for private gain.	Removal	_____	_____
Misconduct whether or not in violation of criminal statute which impairs performance or trustworthiness.	Reprimand/ Removal	Suspension/ Removal	_____
Negligent or willful contract mismanagement.	Reprimand/ Removal	Suspension/ Removal	Removal
Negligent or willful failure to maintain contract files.	Reprimand/ Removal	Suspension/ Removal	Suspension/ Removal
Knowing and willful failure to secure competition when required.	Suspension/ Removal	Suspension/ Removal	Removal
Awarding more than one contract to avoid authority limits or requirements.	Suspension/ Removal	Suspension/ Removal	Removal
Negligent or willful award of contracts in excess of authority.	Reprimand/ Removal	Suspension/ Removal	Removal
Negligent or willful preparation or issuance of contract for unreasonable quantities.	Reprimand/ Removal	Suspension/ Removal	Removal
Knowingly preparing inaccurate estimates in proposal/bid process with resultant losses to Government.	Reprimand/ Suspension	Suspension/ Removal	Removal

Exhibit 10-4. Excerpts From a Typical Agency Penalty Guide.

10.3 STANDARDS OF CONDUCT (CONTRACTORS)

Contractors and prospective contractors may not engage in improper business practices that would bring about the situations noted in Section 10.2. Based on a finding that a firm has violated laws or standards of conduct, a CO may:

- Determine that the firm is nonresponsible for the instant procurement under the General Standards on integrity or eligibility.
- Recommend the firm for debarment or suspension to the debarring official.
- Void or rescind contracts in relation to which there has been:
 - A final conviction of bribery.
 - A conflict of interest.
 - Misconduct.

In addition, a number of these standards carry additional statutory penalties. Examples of specific standards that apply to contractors are described in the following sections.

10.3.1 Offers of Employment

As a general rule, it is unethical to offer employment to a Government employee if the purpose of such an offer is to gain an unfair advantage or otherwise improperly benefit from the offer.

10.3.2 Collusive Pricing

Offerors must submit prices that are arrived at independently:

- Without (for the purpose of restricting competition):
 - Consultation.
 - Communication.
 - Agreement.
- With any other offeror or competitor relating to:
 - Prices.
 - Intention to submit an offer.
 - Methods or factors used to calculate the prices offered.

10.3.3 Contractor Gratuities to Government Personnel

A contractor's right to receive a contract or to keep a contract may be denied if the agency head determines that the contractor, its agent, or representative offered or gave a gratuity to an officer, official, or employee of the Government for the purpose of obtaining:

- A contract.
- Favorable treatment under an existing contract.

10.3.4 Anti-Trust Violations

Violations that eliminate competition or restrain trade include:

- Collusive bidding.
- Rotated low bids.
- Collusive price estimating systems.
- Follow-the-leader pricing.
- Sharing of the business.

10.3.5 Contingent Fees

A contingent fee is a fee that depends upon the success that a person or concern has in securing a Government contract; such as a:

- Commission.
- Brokerage.
- Percentage.

The payment of contingent fee is considered contrary to public policy because it may lead to "attempted or actual exercise of improper influence." The prohibition against the payment of a contingent fee does not apply to fees paid to a bonafide employee or agency.

This policy is implemented by including the clause "Covenant Against Contingent Fees" in (most) contracts. In the clause, the contractor warrants that "no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bonafide employee or agency."

10.3.6 Subcontractor Kickbacks

The standard comes from the "Anti-Kickback Act of 1986." Its purpose is to discourage:

- subcontractors from making payments, and
- contractors from accepting payments,

for the purpose of obtaining or rewarding favorable treatment in connections with a prime contract or a subcontract relating to a prime contract. Exhibit 10-5 shows examples of kickbacks.

EXAMPLE OF KICKBACKS

- Money
- Fee
- Commission
- Gift
- Gratuity
- Thing of value
- Other compensation

Exhibit 10-5. Example of Kickbacks.

10.3.7 Unreasonable Restrictions on Subcontractor Sales

Prime contractors should not unreasonably preclude subcontractors from making direct sales to the Government of the kinds of supplies or services furnished to the prime contractor for use under its contracts with the Government.

10.4 PROCUREMENT INTEGRITY

In 41 U.S.C. 423, the Congress established additional prohibitions—and additional administrative, contractual, civil, and criminal penalties—with respect to:

- Discussions of future employment or business opportunities between Federal procurement officials and competing contractors.
- Bribes and gratuities.
- The unauthorized disclosure of source selection and proprietary information.

Furthermore, this section of law establishes additional postemployment restrictions on Government officers and employees who served as procurement officials prior to separation from the Government.

See section 3.104 of the FAR for the effective dates and implementation of statutory requirements for procurement integrity.

APPENDIX A

GLOSSARY

Note: References to sections of this text are provided in parentheses at the end of each definition.

ACCEPTANCE	(1) The act of accepting an offer. (Preface) (2) The act of an authorized representative of the Government by which the Government, for itself or as agent of another, assumes ownership of existing identified supplies tendered, or approves specific services rendered as partial or complete performance of the contract. ¹ (§8.2.1.1)
ACQUISITION	The acquiring by contract, with appropriated funds, of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. ² (Preface)
ACQUISITION PLAN	A plan for an acquisition which serves as the basis for initiating the individual contracting actions necessary to acquire a system or support a program. ³ (§6.1.2).
ACQUISITION PLANNING	The process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost; includes development of an overall strategy for managing the acquisition. ⁴ (§6.1.2).
ADMINISTRATIVE LAW	Rules, regulations, and decisions made by instrumentalities of the Federal Government that have the force and effect of law. (§3.1.3)

¹See FAR 46.101.

²See FAR 2.1.

³See FAR 7.104 and 7.105.

⁴See FAR 7.101.

ADVANCE PAYMENTS	Advances of money by the Government to a contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. ⁵ (§7.1.1.3)
AGENCY	One party, known as the principal, appoints another party, known as an agent, to enter into a business or contractual relationship with a third party. In Governmental contracting, the: <ul style="list-style-type: none"> • Government is the principal. • Contracting officer (CO) is the agent. • Third party is the contractor. (§4.2.1)
AGREEMENT	Negotiated understandings on terms and conditions that will be incorporated in forthcoming contracts between the two parties. By definition, an agreement does not contain all the elements necessary to be considered a contract. See Basic Agreement and Basic Ordering Agreement. (§7.1.1.1)
ALLOCABLE COST	A cost is allocable to a Government contract if it— <ul style="list-style-type: none"> • Is incurred specifically for the contract; • Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or • Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.⁶ (§8.3.1.3)
AMENDMENT	A change (correction, deletion, or addition) to any information contained in an IFB or RFP (or previous amendment thereto). The amendment becomes part of the solicitation and any resulting contract. ⁷ (§7.1.2.4)
ANTI-DEFICIENCY ACT	A law prohibiting the obligation of money in advance of an appropriation or in excess of the amount of an available appropriation. (§3.2.2 and §6.2.1.2)
ANTI-TRUST VIOLATION	Practices that eliminate competition or restrain trade, such as collusive bidding, follow-the-leader pricing, rotated low bids, collusive price estimating systems, and sharing of the business. ⁸ (§10.3.4)

⁵See FAR 32.102(a).

⁶See FAR 31.201-4.

⁷See FAR 14.208 and 15.410.

⁸See FAR 3.301.

APPROPRIATION	Authority to obligate public funds that will result in immediate or future outlays. (§2.2)
ASSIGNMENT OF CLAIMS	The transfer or making over by the contractor to a bank, trust company, or other financing institution—as security for a loan to the contractor—of its right to be paid by the Government for contract performance. ⁹ (§8.3.1.4)
AUCTION	A negotiation tactic prohibited under FAR 15.610. Prohibited auction techniques include: <ul style="list-style-type: none"> • Indicating to an offeror a cost or price that it must meet to obtain further consideration. • Advising an offeror of its price standing relative to another offeror (however, it is permissible to inform an offeror that its cost or price is considered by the Government to be too high or unrealistic). • Otherwise furnishing information about other offerors' prices.¹⁰ (§7.3.2.3)
AUDIT	A review of a company's accounting procedures, accounting practices, books, records, documents, and other evidence related to (a) cost or pricing data or (b) costs claimed to have been incurred or anticipated to be incurred in performing a contract. ¹¹ (§7.3.1.5, 8.3.1.3, 8.3.1.6, 8.3.1.7, 8.3.2, and 9)
AUTHORIZATION LEGISLATION	A law which permits the establishment or continuation of Federal programs and agencies. Authorizing legislation is normally required before the enactment of budget authority, and such authority is normally provided in a separate appropriations act. (§2.2)
BASIC AGREEMENT	A written instrument of understanding, negotiated between an agency or contracting activity and a contractor, that (1) contains contract clauses applying to future contracts between the parties during its term and (2) contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement. A basic agreement is not a contract. (§7.1.1.1)
BASIC ORDERING AGREEMENT (BOA)	A written instrument of understanding, negotiated between an agency, contracting activity, or contracting office and a contractor, that contains (1) terms and clauses applying to future contracts (orders) between the parties during its term, (2) a description, as specific as practicable, of supplies or services to be provided, and (3) methods for pricing, issuing, and delivering future orders under the basic ordering agreement. A basic ordering agreement is not a contract. (§7.1.1.1)

⁹See FAR 32.801.

¹⁰See FAR 15.610(d).

¹¹See FAR 52.215-2.

BEST AND FINAL OFFER (BAFO)	In competitive negotiations, proposals prepared by offerors in the competitive range following completion of discussions and receipt of a written request for BAFOs from the contracting officer. ¹²
BID	An offer in response to an Invitation for Bids. ¹³ (§6.4.3)
BID GUARANTEE	A form of security assuring that the bidder (a) will not withdraw a bid within the period specified for acceptance and (b) will execute a written contract and furnish required bonds, including any necessary coinsurance or reinsurance agreements, within the time specified in the bid, unless a longer time allowed, after receipt of the specified forms. ¹⁴ (§7.1.1.5)
BIDDER	An offeror who submits a bid in response to an Invitation for Bids (§6.4.3)
BOARD OF CONTRACT APPEALS (BCA)	An instrumentality of a Federal department or agency which hears contractor appeals of contracting officer decisions on claims arising under or relating to a contract subject to the Contract Disputes Act. (§2.2, 3.1.3, and 9.3)
BOND	A written instrument executed by a bidder or contractor (the “principal”), and a second party (the “surety” or “sureties”), to assure fulfillment of the principal’s obligations to a third party (the “obligee” or “Government”), identified in the bond. If the principal’s obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee. ¹⁵ (§7.1.1.5 and 9.2.2)
BUY AMERICAN ACT	An act requiring that only domestic end products be acquired for public use, except articles, materials, and supplies— <ul style="list-style-type: none"> • For use outside the United States. • For which the cost would be unreasonable, as determined in accordance with FAR 25.105. • For which the agency head determines that domestic preference would be inconsistent with the public interest. • That are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities, of a satisfactory quality (see FAR 25.108). • Purchased specifically for commissary resale. (§6.4.2.2)

¹²See FAR 15.611.

¹³See the definition of offer in FAR 2.1.

¹⁴See FAR 28.001.

¹⁵See FAR 28.001.

CHANGE ORDER	A written order signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent. A change order is an example of a unilateral modification (see Modification). ¹⁶ (§9.1.1)
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)	A council chaired by a representative of the GSA and consisting of members representing twelve civilian agencies, which, along with the Defense Acquisition Regulatory Council (DARC), has responsibility for maintaining the FAR (§3.3.2).
CLAIM	A written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. ¹⁷ (§9.3).
CLAUSE	A term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award. ¹⁸ Clauses state the rights and obligations of the parties to a contract. (§7.1)
CLOSEOUT	The process for closing out the contract file following physical completion (i.e., discharge) of a contract. ¹⁹ (§8.4)
CODE OF FEDERAL REGULATIONS (CFR)	Codification of rules published in the Federal Register by the executive departments and agencies of the Federal Government. (§3.1.3)
COLLUSION	Any consultation, communication, or agreement between two or more offerors or competitors relating to proposed prices, the intention to submit an offer, or the methods or factors used to calculate the prices offered. ²⁰ (§10.3.2)
COMMERCE BUSINESS DAILY	A publication of Government procurement invitations, contract awards, and sales of surplus property. A new edition of the CBD is issued every business day. Each edition contains approximately 500-1,000 notices. Each notice appears in the CBD only once. ²¹
COMMON LAW	Decisions handed down by judges in courts of law. (§3.1.4)

¹⁶See FAR 43.101.

¹⁷See FAR 33.201.

¹⁸See FAR 52.101(a).

¹⁹See FAR 4.804.

²⁰See FAR 52.203-2(a)(1).

²¹See the Reader's Guide in the CBD.

COMPETENT	<p>An agent for a contracting party who, at the time of agreement to a contract, is:</p> <ul style="list-style-type: none"> • Of sound mind, • Free of the influence of drugs or alcohol, and • Otherwise legally authorized to enter into the agreement on behalf of the party.
COMPETITIVE RANGE	<p>All proposals that the CO determines have a reasonable chance of being selected for award, based on cost or price and other factors that were stated in the solicitation. Unless the CO decides to award without discussions, the CO must conduct written or oral discussion with all responsible offerors who submit proposals within the competitive range.²² (§7.3.1.8)</p>
CONSIDERATION	<p>Anything of value that changes hands between the parties to a contract. (Preface)</p>
CONTINGENT FEE	<p>Any commission, percentage, brokerage or other fee that is contingent upon the success that a person or concern has in securing a government contract. ²³ (§10.3.5)</p>
CONTRACT	<p>A mutually binding legal relationship obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them.²⁴ (Preface)</p>
CONTRACT MODIFICATION	<p>Any written change in the terms of a contract. Unilateral modifications are signed only by the CO; bilateral by both parties.²⁵ (§9.1.1).</p>
CONTRACT SCHEDULE	<p>The complete statement of the requirement in the solicitation, including not only the Statement of Work and Specifications but also the terms and conditions with respect to packaging and marking, inspection and acceptance, deliveries or performance, contract administration data, and other special contract requirements. The Schedule includes Sections A through H of the Uniform Contract Format.²⁶ (§7.1.1.6)</p>

²²See FAR 15.609 and 15.610.

²³See FAR 3.401.

²⁴See FAR 2.1.

²⁵See FAR 43.101 and 43.103.

²⁶See FAR 14.201-2, 14.201-9(b), and 15.406-2.

CONTRACT TYPE	(1) The name of the compensation arrangement established by the terms and conditions of the contract, such as Firm Fixed Price, Fixed Price Redeterminable, Cost Plus Award Fee, Cost Plus Fixed Fee, or Cost Plus Incentive Fee. ²⁷ (2) The name of the ordering arrangement established by the terms and conditions of an indefinite delivery contract, such as Definite Quantity, Indefinite Quantity, or Requirements. ²⁸ (§7.1.1.1 and 8.3.1.7)
CONTRACTING	The purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. ²⁹ (Preface)
CONTRACTING ACTIVITY	An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. ³⁰ (§4.1.2)
CONTRACTING OFFICER (CO)	An agent of the Government (see “agency”) with authority to enter into, administer, or terminate contracts and make related determinations and findings. ³¹ (§4.2.2)
CONTRACTING OFFICER'S REPRESENTATIVE (COR)	A Federal employee to whom a Contracting Officer has delegated limited authority in writing to make specified contract-related decisions. Depending on the type of authority delegated, may be referred to as the Contracting Officer's Technical Representative (COTR). (§4.2.2 and 8.1.1)
COST	The amount of money expended (outlays) in acquiring supplies or services. The total cost of an acquisition includes: <ul style="list-style-type: none"> • The dollar amount paid to the contractor under the terms and conditions of the contract. • Any direct costs for acquiring the supplies or services not covered in the contract price. • Any cost of ownership not covered in the contract price. • The Government's overhead for awarding and administering the contract. (§1.2.3)
COST ACCOUNTING STANDARDS (CAS)	Standards for the measurement, assignment, and allocation of costs to contracts with the United States. ³² These standards are established by the Cost Accounting Standards Board and incorporated in Part 30 of the FAR. (§8.3.2.2).

²⁷See FAR 16.101.

²⁸See FAR 16.501(a).

²⁹See FAR 2.1.

³⁰See FAR 2.1.

³¹See FAR 2.1.

³²See section 26(a) of the Office of Federal Procurement Policy Act, as amended.

COST ANALYSIS	<p>The review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.³³ (§7.3.1.6)</p>
COST OR PRICING DATA	<p>All facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.</p> <p>Examples of cost and pricing data:</p> <ul style="list-style-type: none"> • Vendor quotations. • Information on changes in production methods and in production or purchasing volume. • Data supporting projections of business prospects and objectives and related operations costs. • Unit-cost trends such as those associated with labor efficiency. • Make-or-buy decisions.³⁴ (§7.3.1.4)
COST REIMBURSEMENT CONTRACTS	<p>Contracts that provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.³⁵ (§7.1.1.1)</p>
CURE NOTICE	<p>A notice of intent to terminate a contract for default unless the contractor "cures" the problem within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer.³⁶ (§8.2.1.4 and 9.2.1)</p>
DEBRIEFING	<p>Informing unsuccessful offerors of the basis for the selection decision and contract award. This information includes the Government's evaluation of the significant weak or deficient factors in the offeror's proposal.³⁷</p>

³³See FAR 15.801.

³⁴See FAR 15.801.

³⁵See FAR 16.301-1.

³⁶See FAR 49.607.

³⁷See FAR 15.1003.

DEFECTIVE COST OR PRICING DATA	Cost or pricing data that are inaccurate, incomplete, or nonconcurrent. ³⁸
DEFENSE ACQUISITION REGULATORY COUNCIL (DARC)	A council comprised of representatives of the Secretary of Defense, the Army, the Navy, the Air Force, the Defense Logistics Agency, and NASA. Among other responsibilities, this council, along with the Civilian Acquisition Council (CAAC), maintains the FAR. (§3.3.2)
DELIVERY ORDER	An order made pursuant to FAR 52.216-18 against an indefinite delivery contract. ³⁹ (8.1.2)
DESIGN SPECIFICATION	A purchase description that establishes precise measurements, tolerances, materials, in process and finished product tests, quality control, inspection requirements, and other specific details of the deliverable. (§6.3.1.1)
DISCHARGE OF A CONTRACT	The obligations incurred by the parties when they entered into the agreement are excused, and the parties are no longer bound to perform as promised. (Preface)
DISCUSSIONS	Any oral or written communication between the Government and an offeror, (other than communications conducted for the purpose of minor clarification) whether or not initiated by the Government, that (a) involves information essential for determining the acceptability of a proposal, or (b) provides the offeror an opportunity to revise or modify its proposal. ⁴⁰ (§6.4.3 and §7.3.2)
ELEMENTS OF A CONTRACT	<p>Elements that must be present in a contract if the contract is to be binding. These include:</p> <ul style="list-style-type: none"> • An offer. • Acceptance. • Consideration. • Execution by competent parties. • Legality of purpose. • Clear terms and conditions. (Preface)
EVALUATION FACTORS	Factors in selecting an offer for award. ⁴¹ See also Price-Related Factors and Technical Factors. (§6.4.2)
EXCUSABLE DELAY	Delay in performing, or failure to perform a contract, arising from causes beyond the control and without the fault or negligence of the contractor. ⁴²

³⁸See FAR 15.804-7.

³⁹See FAR 52.216-18.

⁴⁰See FAR 15.601.

⁴¹See FAR 15.605.

⁴²See FAR 52.249-8(c).

EXECUTIVE ORDER (EO)	An order issued by the President that establishes policies to be followed by executive agencies. (§3.1.3)
FACTFINDING	The process of identifying and obtaining information necessary to complete the evaluation of proposals. This may include factfinding sessions with offerors as provided in FAR 15.807a. (§7.3.2.1)
FEDERAL ACQUISITION REGULATION (FAR)	Uniform policies and procedures for acquisition by executive agencies. The FAR is jointly prescribed, prepared, issued and maintained by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration. (§3.1.3 and 3.3)
FEDERAL ACQUISITION REGULATORY COUNCIL	A council comprised of the Administrator for Federal Procurement Policy, the Secretary of Defense, the Administrator of National Aeronautics and Space, and the Administrator of General Services. Under the Office of Federal Procurement Policy Act, this council assists in the direction and coordination of Government-wide procurement policy and procurement regulatory activities. (§2.2)
FEDERAL REGISTER (FR)	A daily Government publication that informs the public of proposed rules, final rules, and other legal notices issued by Federal agencies. (§3.1.3)
FEDERAL SPECIFICATIONS (FED SPECS)	Specifications and standards that have been implemented for use by all Federal agencies. GSA lists them in the Index of Federal Specifications, Standards, and Commercial Item Descriptions. ⁴³ (§6.3.1.1)
FEDERAL SUPPLY SCHEDULES	Indefinite delivery contracts established by the General Services Administration (and other Federal agencies as authorized by GSA) with commercial firms. The Schedules are a required source for commonly used supplies and services, and provide Federal activities with a simplified process for obtaining such supplies and services at prices associated with volume buying. ⁴⁴ (§6.4.1.1)
FEDERAL SUPPLY SERVICE	A functional division of the General Services Administration. The FSS is responsible, on a Governmentwide basis, for acquiring and maintaining stocks of certain supplies; for acquiring office furniture and fixtures, and certain power and hand tools; for purchasing or leasing motor vehicles; and for establishing and maintaining “schedule” contracts. (§4.1.2)
FEE OR PROFIT	Money paid to a contractor over and above total reimbursements for allowable costs. ⁴⁵ (§7.1.1.1, 7.3.1.6, and 8.3.1.7)

⁴³See FAR 10.001.

⁴⁴See FAR 8.104(a).

⁴⁵See FAR 15.901(a).

FIRM FIXED PRICE CONTRACT	A contract that establishes a price not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. ⁴⁶ (§7.1.1.1)
FIXED PRICE CONTRACT	A contract that establishes a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances. See also Firm Fixed Price contracts. ⁴⁷ (§7.1.1.1 and 8.3.1.7)
FRAUD	A felonious act of corruption, or an attempt to cheat the Government or corrupt its agents. (§7.4.4)
FULL AND OPEN COMPETITION (FAOC)	Acquisitions in which all responsible sources are permitted to compete (although some sources may be excluded as provided in FAR §6.2). ⁴⁸ (§6.4.1.4)
FUNCTIONAL SPECIFICATION	A purchase description that describes the deliverable in terms of performance characteristics and intended use, including those characteristics which at minimum are necessary to satisfy the intended use. (§6.3.1.1)
GENERAL ACCOUNTING OFFICE (GAO)	An office within the legislative branch that serves as "the watchdog for the Congress." Among other things, the GAO audits agency programs and management and makes recommendations on protests. (§2.1.4)
GENERAL SERVICES BOARD OF CONTRACT APPEALS (GSBCA)	A Board which, among other responsibilities, has statutory authority to hear protests related to the acquisition of automatic data processing (ADP) equipment or related resources. (§2.2)
GOVERNMENT PROPERTY	All property owned by or leased to the Government or acquired by the Government under the terms of the contract. It includes both (1) Government-furnished property and (2) property acquired or otherwise provided by the contractor for performing a contract and to which the Government has title. ⁴⁹ (§8.2.2)
GOVERNMENT FURNISHED PROPERTY	Property in the possession of, or directly acquired by, the Government and subsequently made available to the contractor. ⁵⁰ (§7.1.1.4)

⁴⁶See FAR 16.202-1.

⁴⁷See FAR 16.201.

⁴⁸See FAR 6.003.

⁴⁹See FAR 45.101.

⁵⁰See FAR 45.101.

INDEFINITE DELIVERY CONTRACT	A type of contract used when the exact times and/or quantities of future deliveries are not known at the time of contract award. ⁵¹ (§7.1.1.1)
INSPECTION	Examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements. ⁵² (§8.2.1)
INVITATION FOR BID (IFB)	The solicitation used in sealed bidding. (§7.1)
LABOR HOUR CONTRACT	A variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor. ⁵³ (§7.1.1.1)
LABOR SURPLUS AREA	A geographic area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus. ⁵⁴ (§6.4.1.2)
LABOR SURPLUS AREA CONCERN	A concern that together with its first tier subcontractors will perform substantially in labor surplus areas. ⁵⁵ (§6.4.1.2)
LETTER CONTRACT	A written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services. ⁵⁶ (§7.1.1.2)
LOAN GUARANTEES	Guarantees made by Federal Reserve banks, on behalf of designated guaranteeing agencies, to enable contractors to obtain financing from private sources under contracts for the acquisition of supplies or services for the national defense. ⁵⁷ (§7.1.1.3)
MARKET RESEARCH	Collecting and analyzing information about the entire market available to satisfy minimum agency needs to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. ⁵⁸ (§6.2.2)

⁵¹See FAR 16.501(a).

⁵²See FAR 31.001.

⁵³See FAR 16.602.

⁵⁴See FAR 20.101.

⁵⁵See FAR 20.101.

⁵⁶See FAR 16.603-1.

⁵⁷See FAR 32.102(c).

⁵⁸See FAR 10.001.

METHOD OF PROCUREMENT	<p>The process employed for soliciting offers, evaluating offers, and awarding a contract . In Federal contracting, contracting officers use one of the following methods for any given acquisition:</p> <ul style="list-style-type: none"> • Small Purchase • Sealed Bidding • Negotiation • Two-Step Sealed Bidding (§6.4.3)
MILITARY SPECIFICATIONS (MIL SPECS)	Specifications and standards maintained by DoD and published in the DoD Index of Specifications and Standards. ⁵⁹ (§6.3.1.1)
NEGOTIATION	<p>(1) A bargaining process between two or more parties seeking to reach a mutually satisfactory agreement or settlement on a matter of common concern. (2) A method of procurement prescribed in Part 15 of the FAR that includes the receipt of proposals from offerors, permits bargaining, and usually affords offerors an opportunity to revise their offers before award of a contract. Bargaining—in the sense of discussion, persuasion, alteration of initial assumptions and positions, and give-and-take—may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.⁶⁰ (§6.4.3)</p>
NONPERSONAL SERVICES CONTRACT	A contract under which the personnel rendering the services are not subject, either by the contract’s terms or by the manner of its administration, to the supervision and control that usually prevails in relationships between the Government and its employees. ⁶¹ (Preface and §6.3.1.3)
OBLIGATION OF FUNDS	Legally binding commitments, such as contract awards, made by Federal agencies during a given period that will require outlays during the same or some future period. (§2.2)
OFFER	A legally binding promise, made by one party to another, to enter into a contractual agreement, if the offer is accepted. In sealed bidding, offers made in response to Invitations To Bids (IFBs) are called “bids.” In negotiated acquisitions, offers made in response to a Request for Proposals (RFP) are called “proposals.” ⁶² (Preface)
OFFICE OF INFORMATION RESOURCES MANAGEMENT (OIRM)	A functional division of the General Services Administration. OIRM is responsible, on a Governmentwide basis, for the acquisition of automatic data processing equipment and related services, establishment of ADP-related schedule contracts, and the provision of telecommunications systems and services. (§4.1.2)

⁵⁹See FAR 10.001.

⁶⁰See FAR 15.102.

⁶¹See FAR 37.101.

⁶²See FAR 2.1.

OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP)	An organization within the Office of Management and Budget (OMB) that provides leadership and direction to Federal procurement programs. (§2.2)
OFFICE OF MANAGEMENT AND BUDGET (OMB)	An office that recommends and monitors Federal programs and funding levels, develops and issues Governmentwide policy guidance on management concerns, and reviews proposed regulations. (§2.2)
OPTION	A unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract. ⁶³ (§9.1)
OUTLAYS	Payments (e.g., checks issued, cash disbursed, and electronic fund transfers) by a Federal department or agency. (§2.2)
PARTIAL PAYMENTS	Payments for items received and accepted by the Government when the contractor has shipped part of the order. Partial payments are generally treated as a method of payment and not as a method of contract financing. ⁶⁴ (§7.1.1.3)
PAYMENT BOND	A bond that assures payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract. ⁶⁵ (§7.1.1.5)
PERFORMANCE BOND	A bond that secures performance and fulfillment of the contractor's obligations under the contract. ⁶⁶ (§7.1.1.5)
PERFORMANCE SPECIFICATION	A purchase description that describes the deliverable in terms of desired operational characteristics. Performance specifications tend to be more restrictive than functional specifications, in terms of limiting alternatives which the Government will consider and defining separate performance standards for each such alternative. (§6.3.1.1)
PERSONAL SERVICES CONTRACT	A contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, as Government employees. ⁶⁷ (Preface and §6.3.1.3)
PREAWARD INQUIRY	Questions and comments from prospective offerors about specifications, terms, and conditions in a solicitation received prior to the opening date of the IFB or closing date of the RFP. ⁶⁸ (§7.1.2.2)

⁶³See FAR 17.201.

⁶⁴See FAR 32.102(d).

⁶⁵See FAR 28.001.

⁶⁶See FAR 28.001.

⁶⁷See FAR 37.101.

⁶⁸See FAR 14.211 and 15.413.

PREBID/PROPOSAL CONFERENCE	A meeting held with prospective offerors before bid opening or before the closing date for submission of proposals. Generally, the purpose of such meetings is to brief the offerors and explain complicated specifications and requirements. ⁶⁹ (§7.1.2.3)
PRICE	(1) A monetary amount given, received, or asked for in exchange for supplies or services. (§7.2.4 and 7.3.1) (2) Cost plus any fee or profit applicable to the contract type. ⁷⁰
PRICE ANALYSIS	The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. ⁷¹ (§7.2.4 and 7.3.1.3)
PRICE-RELATED FACTOR	When evaluating offers for award, any factor applied in identifying that offer which would represent the lowest total cost to the Government. ⁷² (§6.4.2.2)
PROCUREMENT ACTION LEAD TIME (PALT)	The time between (1) acceptance of a PR by the contracting officer and (2) award of the contract. (§6.2.1.1)
PROCUREMENT PLANNING	Upon acceptance of the Purchase Request, the plan developed by a CO for soliciting offers, evaluating offers, and awarding a contract. (§6.4.4)
PROVISION	<p>A term or condition used only in solicitations and applying only before contract award. Provisions provide information to prospective offerors on such matters as:</p> <ul style="list-style-type: none"> • Preparing and submitting offers. • The evaluation of offers and the offeror's right to protest award.⁷³ <p>Provisions are not included in the resulting contract. (§7.1)</p>
PROFIT	See Fee.
PROGRESS PAYMENTS	Payments made under a fixed price contract on the basis either of (1) costs incurred by the contractor as work progresses under the contract or (2) on physical progress in accomplishing the work. ⁷⁴ (§7.1.1.3 and 8.3.1.6)

⁶⁹See FAR 14.207 and 15.409.

⁷⁰See FAR 15.801.

⁷¹ See FAR 15.801.

⁷²See FAR 14.201-8.

⁷³See FAR 52.101(a).

⁷⁴See FAR 32.102(b).

PROTEST	A written objection by an interested party to a solicitation, proposed award, or award of a contract. Interested parties include actual or prospective offerors whose direct economic interests would be affected by the award of a contract or by the failure to award a contract. ⁷⁵ (§7.4.3)
PUBLIC BUILDINGS SERVICE (PBS)	A functional division of the General Services Administration. PBS has broad responsibilities for acquiring, through purchase or lease, buildings and other real estate for Federal departments and agencies, and for the maintenance of public buildings. (§4.1.2)
PURCHASE ORDER (PO)	An offer by the Government to buy certain supplies or nonpersonal services and construction from commercial sources, upon specified terms and conditions, the aggregate amount of which does not exceed the small purchase limit. ⁷⁶
PURCHASE DESCRIPTION	Describe the essential physical characteristics or functions required to meet the Government's minimum need. ⁷⁷ (§6.3.1.1)
PURCHASE REQUEST (PR)	A requisition prepared by a requiring activity which (1) describes the supplies or services to be acquired, (2) certifies the availability of funds for the acquisition, and (3) includes other information, clearances, and approvals necessary for the CO to initiate the acquisition. (§6.2.1.1)
QUALITY	The extent to which the contract's deliverable satisfies the actual minimum needs of the end users. (§1.2.1)
QUALITY ASSURANCE (QA)	Functions, including inspection, performed to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity. ⁷⁸ (§8.2)
REASONABLE COST	A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. ⁷⁹ (§8.3.1.3)
REQUEST FOR PROPOSALS (RFP)	The solicitation in negotiated acquisitions (§7.1)
REQUEST FOR QUOTATIONS (RFQ)	A document used in soliciting quotations. RFQs are used when the Government does not intend to award a contract on the basis of the solicitation but wishes to obtain price, delivery, or other market information as the basis for preparing a purchase order or for planning purposes. A quotation received in response to an RFQ is not an offer and cannot be accepted by the Government to create a binding contract.

⁷⁵See FAR 33.101.

⁷⁶See FAR 13.101.

⁷⁷See FAR 10.001.

⁷⁸See FAR 46.101.

⁷⁹See FAR 31.201-3.

RESPONSIBLE OFFEROR	<p>An offeror that meets the general and any special standards established under FAR 9.104.⁸⁰ To be determined responsible under the general standards, a prospective contractor must—</p> <ul style="list-style-type: none"> • Have adequate financial resources to perform the contract, or the ability to obtain them; • Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments; • Have a satisfactory performance record; • Have a satisfactory record of integrity and business ethics; • Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors); • Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and • Be otherwise qualified and eligible to receive an award under applicable laws and regulations.
RESPONSIVE	<p>A bid that complies in all material respects with the IFB.⁸¹ (§7.2.5)</p>
RISK	<p>The probability of not attaining the goals for which the party entered into a contract. For the contractor (seller), the principal business or financial risk is an unexpected loss of money on the contract. For the Government, the principal risks are that:</p> <ul style="list-style-type: none"> • The total cost of the acquisition will be higher than expected or unreasonable in relation to the actual costs of performance. • The contractor will fail to deliver or will not deliver on time. • The final deliverable will not satisfy the Government’s actual need, whether or not “acceptable” under the terms and conditions of the contract. • The Government’s need will change prior to receipt of the deliverable. (§1.2.4)

⁸⁰See FAR 9.101.

⁸¹See FAR 14.301(a).

SEALED BIDDING	<p>A method of procurement prescribed in Part 14 of the FAR that employs competitive bids, public opening of bids, and awards.⁸² Under this method:</p> <ul style="list-style-type: none"> • The CO issues an Invitation for Bids (IFB). • Offerors submit sealed bids. • The bids are publicly opened. • Award is made to the responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the Government, considering only price and the price-related factors included in the invitation. (§6.4.3)
SERVICE CONTRACT	<p>A contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.⁸³ (Preface and §6.3.1.3)</p>
SET-ASIDE	<p>An acquisition reserved exclusively for offerors who fit into a specified category. Set-asides are commonly established for small businesses and businesses in labor surplus areas.⁸⁴ (§6.4.1.2)</p>
SHOW CAUSE NOTICE	<p>A written delinquency notice, sent to the contractor immediately upon expiration of the delivery period, advising that the Government is considering termination for default; affords the contractor the opportunity to show cause why termination for default should not occur.⁸⁵ (§8.2.1.4 and 9.2.1)</p>
SMALL BUSINESS CONCERN	<p>A concern (including its affiliates) which is (1) independently owned and operated, (2) not dominate in the field of operation in which it is bidding on Government contracts, and (3) qualifies as a small business under the criteria and size standards in 13 CFR Part 121.⁸⁶ (§6.4.1.2)</p>
SMALL PURCHASE	<p>The acquisition of supplies, nonpersonal services, and construction in the amount of \$25,000 or less through the "simplified procedures" (e.g., imprest funds, purchase orders, and blanket purchase agreements) prescribed in Part 13 of the FAR.⁸⁷ (Preface and §6.4.3)</p>
SOCIOECONOMIC OBJECTIVE	<p>Any objective for an acquisition established by statute or by an Executive Order which is in addition to the innate goals (i.e., quality, cost, timeliness, risk, competition, and integrity) of the acquisition process. (§1.2.5)</p>

⁸²See FAR 14.101.

⁸³See FAR 37.101.

⁸⁴See FAR 19.501(a) and 20.201-1.

⁸⁵See FAR 49.607.

⁸⁶See FAR 19.001.

⁸⁷See FAR 13.101.

SOLE SOURCE ACQUISITION	A contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source. ⁸⁸ (§6.4.1.4)
SOLICITATION	A document requesting or inviting offerors to submit offers. Solicitations basically consist of (a) a draft contract and (b) provisions on preparing and submitting offers. (§7.1)
SOURCE SELECTION	<p>The process of soliciting and evaluating offers for award. Formal source selections⁸⁹ usually involve the:</p> <ul style="list-style-type: none"> • Establishment of a group (e.g., a Source Selection Board) to evaluate proposals. • Naming of a Source Selection Authority, who might be the CO, the requiring activity manager, or a higher level agency official, depending on the size and importance of the acquisition. • Preparation of a written source selection plan. (§6.4.4)
SPECIFICATION	A description of the technical requirements for a material, product, or service that includes the criteria for determining whether the requirements are met. ⁹⁰ (§6.3.1.1)
STANDARD	A document that establishes engineering and technical limitations and applications of items, materials, processes, methods, designs, and engineering practices; includes any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products, or the interchangeability of parts used in those products. ⁹¹ (§6.3.1.1)
STATEMENT OF WORK (SOW)	The complete description of work to be performed under the contract, encompassing all specifications and standards established or referenced in the contract. The SOW constitutes Part C of the Uniform Contract Format. (§6.3.1.2)
STATUTE	A law enacted by the legislative branch of Government and signed by the President; identified by a public law number. (§3.1.2)
STOP WORK ORDER	Under the clause at FAR 52.212-13, a written order to the contractor from the CO requiring the contractor to stop all, or any part, of the work called for by the contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. (§8.2.1.3)

⁸⁸See FAR 6.003.

⁸⁹See FAR 15.612.

⁹⁰See FAR 10.001.

⁹¹See FAR 10.001.

SUBCONTRACT	Any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders. ⁹² (§7.4.1.3 and 8.1.3)
SUBCONTRACTOR	Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor. ⁹³ (§7.4.1.3 and 8.1.3)
SUPPLIES	All property except land or interest in land, including (but not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing. ⁹⁴ (Preface)
SYNOPSIS	(1) A brief description of the supplies and services to be acquired by contract. It also provides prospective offerors with information on obtaining a copy of the IFB or RFP from the responsible contracting office. Synopses are published in the Commerce Business Daily (CBD). ⁹⁵ (§7.1.2.1) (2) A notice of award published in the Commerce Business Daily (CBD). ⁹⁶ (§7.4.2.1)
TECHNICAL FACTORS	Factors other than price-related used in evaluating offers for award. Examples include technical excellence, management capability, personnel qualifications, prior experience, past performance, and schedule compliance. ⁹⁷ (§6.4.2.3)
TECHNICAL LEVELING AND TRANSFUSION	Negotiation tactics prohibited under FAR 15.610. Technical leveling means helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal. Technical transfusion means disclosing technical information supplied by one offeror (or otherwise pertaining to that offer) to other, competing offerors. ⁹⁸ (§7.3.2.3)
TERMINATION FOR CONVENIENCE	Generally, the exercise of the Government's contractual right to completely or partially terminate a contract for the convenience of the Government. ⁹⁹ (§9.2)

⁹²See FAR 44.101.

⁹³See FAR 44.101.

⁹⁴See FAR 2.1.

⁹⁵See FAR 5.201.

⁹⁶See FAR 5.301.

⁹⁷See FAR 9.104-2 and 15.605.

⁹⁸See FAR 15.610(d).

⁹⁹See FAR 49.002.

TERMINATION FOR DEFAULT	Generally, the exercise of the Government's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations. ¹⁰⁰ (§9.2)
TERMS AND CONDITIONS	All language in a solicitation and contract, including amendments, attachments, and referenced clauses and provisions. (§7.1.1)
TIME AND MATERIALS CONTRACT	A type of contract that provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (2) materials at cost, including, if appropriate, material handling costs as part of material costs. ¹⁰¹ (§7.1.1.1)
TIMELINESS	Delivery of requisitioned supplies to the end user in the quantity and at the time necessary for the end user's purposes, or performance of services at the time necessary for the end user's purposes. (§1.2.2)
TWO-STEP SEALED BIDDING	A method of procurement prescribed in section 14.5 of the FAR. The two steps are as follows: <ol style="list-style-type: none"> 1. The CO issues a request for technical proposals. Technical proposals received are evaluated, and, if necessary, discussed. 2. Sealed bids are solicited from only those sources that submitted acceptable technical proposals under step one. Award is made as in sealed bidding. (§6.4.3).
UNALLOWABLE COST	Any cost which, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable. ¹⁰² (§8.3.1.3)
UNIFORM CONTRACT FORMAT	A format for preparing solicitations and contracts prescribed in FAR 14.201-1 and 15.406-1.
UNSOLICITED PROPOSAL	A written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request. ¹⁰³ (§6.4.1.5)

¹⁰⁰See FAR 49.401.

¹⁰¹See FAR 16.601(a).

¹⁰²See FAR 31.001.

¹⁰³See FAR 15.501.

APPENDIX B

LIST OF ACRONYMS

ACO - Administrative Contracting Officer

ADP - Automated Data Processing

ADPE - Automated Data Processing Equipment

APR - Agency Procurement Request

ASA - Assistant Secretary for Administration

ASPA - Armed Services Procurement Act

BA - Basic Agreement

BAFO - Best and Final Offer

BCA - Board of Contract Appeals

BOA - Basic Ordering Agreement

CA - Contract Administration

CAAC - Civilian Agency Acquisition Council

CAO - Contract Administration Office

CAS - Cost Accounting Standards

CASDA - Cost Accounting Standards Disclosure Statements

CICA - Competition in Contracting Act

CFR - Code of Federal Regulations

CO - Contracting Officer

COTR - Contracting Officer's Technical Representative

CPAF - Cost Plus Award Fee

CPFF - Cost Plus Fixed Fee

CPIF - Cost Plus Incentive Fee

DAR - Defense Acquisition Regulation

DARC - Defense Acquisition Regulatory Council

DCMC - Defense Contract Management Command

DoD - Department of Defense

DOL - Department of Labor

DOT - Department of Transportation

EO - Executive Order

FAC - Federal Acquisition Circular

FAOC - Full and Open Competition

FAR - Federal Acquisition Regulation

FARC - Federal Acquisition Regulatory Council

FED SPECS - Federal Specifications

FFP - Firm Fixed Price

FOB - Free on Board

FPASA - Federal Property and Administrative Services Act

FPEPA - Fixed Price with Economic Price Adjustment

FPMR - Federal Property Management Regulation

FPR - Federal Procurement Regulation

FR - Federal Register

FSS - Federal Supply Service

G & A - General and Administrative

GAO - General Accounting Office

GFA - Government Furnished Property

GSA - General Services Administration

GSAR - General Services Administration Acquisition Regulation

GSBCA - General Services Board of Contract Appeals

HCA - Head of Contracting Activity

IFB - Invitation for Bids

LSA - Labor Surplus Area

MIL SPECS - Military Specifications

OAGM - Office of Acquisition and Grant Management

OFPP - Office of Federal Procurement Policy

OIRM - Office of Information Resources Management

OMB - Office of Management and Budget

PALT - Procurement Administrative Lead Time

PBS - Public Buildings Service

PCO - Procuring Contracting Officer

PD - Purchase Descriptions

PO - Purchase Order

PM - Program Manager

QA - Quality Assurance

R & D - Research and Development

R.S. - Revised Statute

RFP - Request For Proposals

RFQ - Request For Quotation

SBA - Small Business Administration

SCA - Service Contract Act

SIC - Standard Industrial Classification

SOW - Statement of Work

TCO - Termination Contracting Officer

U.S.C. - United States Code

UCF - Uniform Contract Format

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